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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 8, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Presidential Documents

Title 3—

The President

Proclamation 8523 of May 20, 2010

National Hurricane Preparedness Week, 2010

By the President of the United States of America

A Proclamation

Each year during hurricane season, Americans living in our coastal and inland communities face the danger of these powerful storms. From high winds and storm surges to tornadoes and flooding, the hazards of hurricanes can destroy communities and devastate lives, and we must aggressively prepare our shores and protect our families.

During National Hurricane Preparedness Week, I urge individuals, families, communities, and businesses to take time to plan for the storm season before it begins. While hurricane forecasting has improved, storms may still develop with little warning. For Americans in hurricane-threatened areas, knowledge and preparation are pivotal to ensure emergency readiness and responsiveness. The National Hurricane Center at the National Oceanic and Atmospheric Administration, as well as the Federal Emergency Management Agency, recommend taking several important steps to ensure safety. These precautions include: developing a family disaster plan; maintaining an emergency supply kit; securing homes, businesses, and belongings; and learning evacuation routes.

I urge those in hurricane-threatened areas to visit www.Hurricanes.gov/Prepare to learn more about what they can do to protect themselves and their property from hurricanes. Emergency preparation resources for hurricanes and other natural disasters are also available at: www.Ready.gov.

To help Americans meet the challenges of severe weather, my Administration is focusing on preparedness and response—before, during, and after hurricanes. We are improving accountability and coordination between all levels of government, modernizing our emergency communications, and empowering more families to prepare themselves. Thanks to advancements in hurricane forecasting and tracking, the National Hurricane Center is working to give citizens more notice before impending storms. With the right planning and preparation, we can safeguard lives, protect property, and enhance America's resilience to national weather emergencies.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 23 through May 29, 2010, as National Hurricane Preparedness Week. I call upon all Americans, especially those in hurricane-prone areas, to learn more about protecting themselves against hurricanes and to work together to respond to them.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12753
Filed 5–25–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8524 of May 20, 2010

National Safe Boating Week, 2010

By the President of the United States of America

A Proclamation

Our Nation's waterways provide endless opportunities for family recreation, exercise, or moments of quiet solitude and reflection. As the weather warms and people prepare to spend time on the water, let us recommit during National Safe Boating Week to practicing safe techniques so boaters of all ages can enjoy this pastime.

Responsible and informed behavior on board can keep boaters and passengers free from harm. Wearing a Coast Guard-approved life jacket, taking a boating safety course, being aware of weather conditions, and ensuring all boats have the necessary safety equipment are all important steps Americans can take to minimize risk on the water. Those who operate boats must also take extra precautions to keep their passengers safe and never boat under the influence of drugs or alcohol.

To help save lives and prevent accidents, the United States Coast Guard partners with boating organizations to raise awareness and teach safe boating practices. Boaters can take advantage of these opportunities to learn, make informed decisions, and teach family and friends to use caution while on board. By practicing safe boating habits and encouraging others to do the same, Americans can protect themselves and others throughout the boating season.

In recognition of the importance of safe boating practices, the Congress, by Joint Resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period prior to Memorial Day weekend as "National Safe Boating Week."

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 22 through May 28, 2010, as National Safe Boating Week. I encourage all Americans who participate in boating activities to observe this occasion by learning more about safe boating practices and to take advantage of boating education.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12754
Filed 5–25–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8525 of May 20, 2010

Small Business Week, 2010

By the President of the United States of America

A Proclamation

Small business owners embody the spirit of entrepreneurship and strong work ethic that lie at the heart of the American dream. They are the backbone of our Nation's economy, they employ tens of millions of workers, and, in the past 15 years, they have created the majority of new private sector jobs. During Small Business Week, we reaffirm our support for America's small businesses and celebrate the proud tradition of private enterprise they represent.

Our Nation is still emerging from one of the worst recessions in our history, and small businesses were among the hardest hit. From mom-and-pop stores to high tech start-ups, countless small businesses have been forced to lay off employees or shut their doors entirely. In these difficult times, we must do all we can to help these firms recover from the recession and put Americans back to work. Our Government cannot guarantee a company's success, but it can help create market conditions that allow small businesses to thrive.

My Administration is committed to helping small businesses drive our economy toward recovery and long-term growth. The American Recovery and Reinvestment Act has supported billions of dollars in loans and Federal contracts for small businesses across the country. The Affordable Care Act makes it easier for small business owners to provide health insurance to their employees, and gives entrepreneurs the security they need to innovate and take risks. We have also enacted new tax cuts and tax credits for small firms. Still, we must do more to empower these companies.

In this year's State of the Union address, I proposed creating a $30 billion lending fund to help increase the flow of credit to small businesses, and I call on the Congress to pass this legislation quickly. My Administration is also working to extend and enhance Small Business Administration programs that have helped small business owners acquire loans and hire workers.

This week, we celebrate the role of entrepreneurs and small businesses in our national life. They are the engine of our prosperity and a proud reflection of our character. A healthy small business sector will give us vibrant communities, cutting-edge technology, and an American economy that can compete and win in the 21st century.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 23 through May 29, 2010, as Small Business Week. I call upon all Americans to recognize the tremendous contributions of small businesses to our Nation with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12755
Filed 5–25–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Proclamation 8526 of May 20, 2010

National Maritime Day, 2010

By the President of the United States of America

A Proclamation

Even before our Nation declared independence, our forebears recognized the importance of merchant ships and seafarers to our economic and national security. Since 1775, America's maritime fleet has risen to the challenges before them and worked to meet our country's needs in times of peace and war alike. On National Maritime Day, we recognize the men and women of the United States Merchant Marine for their contributions to America's leadership in the global marketplace, and to our security.

Civilian mariners and their ships have played an important role in equipping our military forces at sea in national conflicts. During World War II, they executed the largest sealift the world had ever known, and thousands gave their lives to help convoys with desperately needed supplies reach our troops. Their service to our Nation continues today. Merchant mariners support military operations in Iraq and Afghanistan, as well as humanitarian missions, including the delivery of supplies to Haiti following this year's devastating earthquake.

The United States Merchant Marine also shepherds the safe passage of American goods. They carry our exports to customers around the world and support the flow of domestic commerce on our maritime highways. They help strengthen our Nation's economy; bolster job-creating businesses; and, along with the transportation industry, employ Americans on ships and tugs, and in ports and shipyards. Today, we pay tribute to the United States Merchant Marine, and we honor all those whose tireless work is laying a foundation for growth, prosperity, and leadership in the 21st century.

The Congress, by a joint resolution approved May 20, 1933, has designated May 22 of each year as "National Maritime Day," and has authorized and requested the President to issue annually a proclamation calling for its appropriate observance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim May 22, 2010, as National Maritime Day. I call upon the people of the United States to mark this observance with appropriate activities, and I encourage all ships sailing under the American flag to dress ship on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

[FR Doc. 2010–12756
Filed 5–25–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Executive Order 13543 of May 21, 2010

National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (the "Commission").

Sec. 2. *Membership.* (a) The Commission shall be composed of not more than 7 members who shall be appointed by the President. The members shall be drawn from among distinguished individuals, and may include those with experience in or representing the scientific, engineering, and environmental communities, the oil and gas industry, or any other area determined by the President to be of value to the Commission in carrying out its duties.

(b) The President shall designate from among the Commission members two members to serve as Co-Chairs.

Sec. 3. *Mission.* The Commission shall:

(a) examine the relevant facts and circumstances concerning the root causes of the Deepwater Horizon oil disaster;

(b) develop options for guarding against, and mitigating the impact of, oil spills associated with offshore drilling, taking into consideration the environmental, public health, and economic effects of such options, including options involving:

(1) improvements to Federal laws, regulations, and industry practices applicable to offshore drilling that would ensure effective oversight, monitoring, and response capabilities; protect public health and safety, occupational health and safety, and the environment and natural resources; and address affected communities; and

(2) organizational or other reforms of Federal agencies or processes necessary to ensure such improvements are implemented and maintained.

(c) submit a final public report to the President with its findings and options for consideration within 6 months of the date of the Commission's first meeting.

Sec. 4. *Administration.* (a) The Commission shall hold public hearings and shall request information including relevant documents from Federal, State, and local officials, nongovernmental organizations, private entities, scientific institutions, industry and workforce representatives, communities, and others affected by the Deepwater Horizon oil disaster, as necessary to carry out its mission.

(b) The heads of executive departments and agencies, to the extent permitted by law and consistent with their ongoing activities in response to the oil spill, shall provide the Commission such information and cooperation as it may require for purposes of carrying out its mission.

(c) In carrying out its mission, the Commission shall be informed by, and shall strive to avoid duplicating, the analyses and investigations undertaken by other governmental, nongovernmental, and independent entities.

(d) The Commission shall ensure that it does not interfere with or disrupt any ongoing or anticipated civil or criminal investigation or law enforcement

activities or any effort to recover response costs or damages arising out of the Deepwater Horizon explosion, fire, and oil spill. The Commission shall consult with the Department of Justice concerning the Commission's activities to avoid any risk of such interference or disruption.

(e) The Commission shall have a staff, headed by an Executive Director.

(f) The Commission shall terminate 60 days after submitting its final report.

Sec. 5. *General Provisions.* (a) To the extent permitted by law, and subject to the availability of appropriations, the Secretary of Energy shall provide the Commission with such administrative services, funds, facilities, staff, and other support services as may be necessary to carry out its mission.

(b) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Secretary of Energy in accordance with guidelines issued by the Administrator of General Services.

(c) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(d) Nothing in this order shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 21, 2010.

[FR Doc. 2010–12805
Filed 5–25–10; 8:45 am]
Billing code 3195–W0–P

Presidential Documents

Memorandum of May 21, 2010

Improving Energy Security, American Competitiveness and Job Creation, and Environmental Protection Through a Transformation of Our Nation's Fleet of Cars And Trucks

Memorandum for the Secretary of Transportation[,] the Secretary of Energy[,] the Administrator of the Environmental Protection Agency[, and] the Administrator of the National Highway Traffic Safety Administration

America has the opportunity to lead the world in the development of a new generation of clean cars and trucks through innovative technologies and manufacturing that will spur economic growth and create high-quality domestic jobs, enhance our energy security, and improve our environment. We already have made significant strides toward reducing greenhouse gas pollution and enhancing fuel efficiency from motor vehicles with the joint rulemaking issued by the National Highway Traffic Safety Administration (NHTSA) and the Environmental Protection Agency (EPA) on April 1, 2010, which regulates these attributes of passenger cars and light-duty trucks for model years 2012–2016. In this memorandum, I request that additional coordinated steps be taken to produce a new generation of clean vehicles.

Section 1. *Medium- and Heavy-Duty Trucks.*

While the Federal Government and many States have now created a harmonized framework for addressing the fuel economy of and greenhouse gas emissions from cars and light-duty trucks, medium- and heavy-duty trucks and buses continue to be a major source of fossil fuel consumption and greenhouse gas pollution. I therefore request that the Administrators of the EPA and the NHTSA immediately begin work on a joint rulemaking under the Clean Air Act (CAA) and the Energy Independence and Security Act of 2007 (EISA) to establish fuel efficiency and greenhouse gas emissions standards for commercial medium- and heavy-duty vehicles beginning with model year 2014, with the aim of issuing a final rule by July 30, 2011. As part of this rule development process, I request that the Administrators of the EPA and the NHTSA:

(a) Propose and take comment on strategies, including those designed to increase the use of existing technologies, to achieve substantial annual progress in reducing transportation sector emissions and fossil fuel consumption consistent with my Administration's overall energy and climate security goals. These strategies should consider whether particular segments of the diverse heavy-duty vehicle sector present special opportunities to reduce greenhouse gas emissions and increase fuel economy. For example, preliminary estimates indicate that large tractor trailers, representing half of all greenhouse gas emissions from this sector, can reduce greenhouse gas emissions by as much as 20 percent and increase their fuel efficiency by as much as 25 percent with the use of existing technologies;

(b) Include fuel efficiency and greenhouse gas emissions standards that take into account the market structure of the trucking industry and the unique demands of heavy-duty vehicle applications; seek harmonization with applicable State standards; consider the findings and recommendations published in the National Academy of Science report on medium- and heavy-duty truck regulation; strengthen the industry and enhance job creation in the United States; and

(c) Seek input from all stakeholders, while recognizing the continued leadership role of California and other States.

Sec. 2. *Passenger Cars and Light-Duty Trucks.*

Building on the earlier joint rulemaking, and in order to provide greater certainty and incentives for long-term innovation by automobile and light-duty vehicle manufacturers, I request that the Administrators of the EPA and the NHTSA develop, through notice and comment rulemaking, a coordinated national program under the CAA and the EISA to improve fuel efficiency and to reduce greenhouse gas emissions of passenger cars and light-duty trucks of model years 2017–2025. The national program should seek to produce joint Federal standards that are harmonized with applicable State standards, with the goal of ensuring that automobile manufacturers will be able to build a single, light-duty national fleet. The program should also seek to achieve substantial annual progress in reducing transportation sector greenhouse gas emissions and fossil fuel consumption, consistent with my Administration's overall energy and climate security goals, through the increased domestic production and use of existing, advanced, and emerging technologies, and should strengthen the industry and enhance job creation in the United States. As part of implementing the national program, I request that the Administrators of the EPA and the NHTSA:

(a) Work with the State of California to develop by September 1, 2010, a technical assessment to inform the rulemaking process, reflecting input from an array of stakeholders on relevant factors, including viable technologies, costs, benefits, lead time to develop and deploy new and emerging technologies, incentives and other flexibilities to encourage development and deployment of new and emerging technologies, impacts on jobs and the automotive manufacturing base in the United States, and infrastructure for advanced vehicle technologies; and

(b) Take all measures consistent with law to issue by September 30, 2010, a Notice of Intent to Issue a Proposed Rule that announces plans for setting stringent fuel economy and greenhouse gas emissions standards for light-duty vehicles of model year 2017 and beyond, including plans for initiating joint rulemaking and gathering any additional information needed to support regulatory action. The Notice should describe the key elements of the program that the EPA and the NHTSA intend jointly to propose, under their respective statutory authorities, including potential standards that could be practicably implemented nationally for the 2017–2025 model years and a schedule for setting those standards as expeditiously as possible, consistent with providing sufficient lead time to vehicle manufacturers.

Sec. 3. *Cleaner Vehicles and Fuels and Necessary Infrastructure.*

The success of our efforts to achieve enhanced energy security and to protect the environment also depends upon the development of infrastructure and promotion of fuels, including biofuels, which will enable the development and widespread deployment of advanced technologies. Therefore, I further request that:

(a) The Administrator of the EPA review for adequacy the current nongreenhouse gas emissions regulations for new motor vehicles, new motor vehicle engines, and motor vehicle fuels, including tailpipe emissions standards for nitrogen oxides and air toxics, and sulfur standards for gasoline. If the Administrator of the EPA finds that new emissions regulations are required, then I request that the Administrator of the EPA promulgate such regulations as part of a comprehensive approach toward regulating motor vehicles; and

(b) The Secretary of Energy promote the deployment of advanced technology vehicles by providing technical assistance to cities preparing for deployment of electric vehicles, including plug-in hybrids and all-electric vehicles; and

(c) The Department of Energy work with stakeholders on the development of voluntary standards to facilitate the robust deployment of advanced vehicle

technologies and coordinate its efforts with the Department of Transportation, the NHTSA, and the EPA.

Sec. 4. *General Provisions.*

(a) This memorandum shall be implemented consistent with applicable law, including international trade obligations, and subject to the availability of appropriations.

(b) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(c) Nothing in this memorandum shall be construed to impair or otherwise affect:

(1) authority granted by law to a department, agency, or the head thereof; or

(2) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

Sec. 5. *Publication.*

The Secretary of Transportation is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
WASHINGTON, May 21, 2010

[FR Doc. 2010–12757
Filed 5–25–10; 8:45 am]
Billing code 4910–62–P

Rules and Regulations

Federal Register
Vol. 75, No. 101
Wednesday, May 26, 2010

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 67

[Docket No. FAA–2009–0773]

Special Issuance of Airman Medical Certificates to Applicants Being Treated With Certain Antidepressant Medications; Re-Opening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Policy statement; re-opening of comment period.

SUMMARY: This action re-opens the comment period on a policy statement published April 5, 2010, related to special issuance of airmen medical certificates to applicants using certain antidepressant medication. The comment period is re-opened for 30 days and responds to a request from the Air Line Pilots Association, International.

DATES: The comment period for the policy statement published April 5, 2010, closed May 5, 2010, is re-opened until June 25, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0773 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or, Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, Federal Air Surgeon's Office, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9689; facsimile (202) 267–5200, e-mail *Judi.M.Citrenbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in formulating this policy by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting it. The most helpful comments explain (with pertinent references to the text of the policy) the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive. We will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may make changes in light of the comments we receive.

Availability of the Policy Statement

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number of this rulemaking.

Background

On April 5, 2010 [64 FR 17047], the Federal Aviation Administration published a policy statement entitled "Special Issuance of Airman Medical Certificates to Applicants Being Treated With Certain Antidepressant Medications." The FAA established a public docket for this policy (FAA–2009–0773) and opened a 30-day comment period until May 5, 2010. The Air Line Pilots Association, International (ALPA) submitted a comment, dated May 5, 2010, requesting that the FAA extend the comment period.

In its comment ALPA stated this policy change is "an important step in the direction of increasing airline safety." In ALPA's view, however, "the new protocol has raised a substantial number of questions regarding its application." ALPA requested an opportunity for a 45-day comment period and specified that this comment period should begin "after the FAA has had the opportunity to answer the specific questions raised about the policy's practical application."

The FAA has evaluated ALPA's request for additional time to comment and is not opposed to re-opening the comment period. Re-opening the comment period for 45 days appears unwarranted, however, given the few comments received regarding the policy

and its practical application during the original 30-day comment period. Therefore, the FAA will re-open the comment period for 30 days.

ALPA has not formally submitted to the public docket its specific questions about the policy's practical application and, as mentioned, few commenters provided input in this regard during the open comment period. To receive appropriate consideration, therefore, the FAA requests specific information regarding these concerns be provided during the next 30 days of the re-opened comment period.

Re-Opening of Comment Period

In accordance with Sec. 11.47(c) of title 14, Code of Federal Regulations, the FAA has reviewed ALPA's comment for extension of the comment period to Docket FAA–2009–0773. Since the comment period has already closed, the FAA will re-open it for a period of 30 days. The petitioner has shown a substantive interest in the policy and has provided good cause to grant re-opening of the comment period. The FAA has determined that re-opening the comment period is consistent with the public interest and that good cause exists for taking this action.

Accordingly, the comment period is re-opened until June 25, 2010.

Issued in Washington, DC, on May 20, 2010.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2010–12576 Filed 5–25–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM09–2–000; Order No. 735]

Contract Reporting Requirements of Intrastate Natural Gas Companies

May 20, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: In this Final Rule, the Commission revises the contract reporting requirements for those natural gas pipelines that fall under the Commission's jurisdiction pursuant to section 311 of the Natural Gas Policy Act or section 1(c) of the Natural Gas Act. The Final Rule revises § 284.126(b) and replaces Form No. 549—Intrastate Pipeline Annual Transportation Report with the new Form No. 549D—Quarterly Transportation and Storage Report for Intrastate Natural Gas and Hinshaw Pipelines. The Final Rule makes changes so as to increase the reporting frequency from annual to quarterly, include certain additional types of information and cover storage transactions as well as transportation transactions, establish a procedure for the Form No. 549D reports to be filed in a uniform electronic format and posted on the Commission's Web site, and hold that those reports must be public and may not be filed with information redacted as privileged. The Commission is also modifying its policy concerning periodic reviews of the rates charged by section 311 and Hinshaw pipelines to extend the cycle for such reviews from 3 years to 5 years.

DATES: *Effective Date:* This rule will become effective April 1, 2011.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

Order No. 735

Final Rule

Issued May 20, 2010.

I. Introduction and Summary

1. In this Final Rule, the Commission revises the contract reporting requirements for (1) intrastate natural gas pipelines [1] providing interstate transportation service pursuant to section 311 of the Natural Gas Policy

[1] Pursuant to section 2(16) of the NGPA, 15 U.S.C. 3301(16), the term "intrastate pipeline" may refer to all entities engaged in natural gas transportation under section 311 of the NGPA or section 1(c) of the NGA. For consistency, this Final Rule will also use the terms "transportation," "pipeline," and "shippers" to refer inclusively to storage activity (except where noted).

Act of 1978 (NGPA) [2] and (2) Hinshaw pipelines providing interstate service subject to the Commission's Natural Gas Act (NGA) section 1(c) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.[3] The revised reporting requirements are intended to increase market transparency, without imposing unduly burdensome requirements on the pipelines. Specifically, the Final Rule revises § 284.126(b) and replaces Form No. 549—Intrastate Pipeline Annual Transportation Report with the new Form No. 549D, so as to (1) increase the reporting frequency from annual to quarterly, (2) include certain additional types of information and cover storage transactions as well as transportation transactions,[4] (3) establish a procedure for Form No. 549D to be filed in a uniform electronic format and posted on the Commission's Web site, and (4) hold that those reports must be public and may not be filed with information redacted as privileged. The Commission is also modifying its policy concerning periodic reviews of the rates charged by section 311 and Hinshaw pipelines to extend the cycle for such reviews from 3 years to 5 years.

II. Background

A. Current Reporting Requirements

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport natural gas "on behalf of" interstate pipelines or local distribution companies served by interstate pipelines "under such terms and conditions as the Commission may prescribe." [5] NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Congress adopted these provisions in order to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of intrastate pipelines into the interstate market. Such entry eliminates the need for duplication of facilities between interstate and intrastate pipelines.[6] Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates, authorizing them to transport natural gas in interstate commerce in the same manner as intrastate pipelines may do under NGPA section 311.[7]

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR § 284.121–126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. Those regulations require that intrastate pipelines performing interstate service under NGPA section 311 must do so on an open access basis.[8] However, consistent with the NGPA's goal of encouraging intrastate pipelines to provide interstate service, the Commission has not imposed on intrastate pipelines all of the Part 284 requirements imposed on interstate pipelines.[9] For example, when the Commission first adopted the Part 284 open access regulations in Order No. 436, the Commission exempted intrastate pipelines from the requirement that they offer open access service on a firm basis.[10] The Commission found that requiring intrastate pipelines to offer firm service to out-of-state shippers could discourage them from providing any interstate service, because such a requirement could progressively turn the intrastate pipeline into an interstate pipeline against its will and against the will of the responsible state authorities. Similarly, Order No. 636–B exempted intrastate pipelines from the requirements of Order No. 636.[11] Those requirements included capacity release, electronic bulletin boards (now Internet Web sites), and flexible receipt and delivery points.

4. Section 284.224 of the regulations provides for the issuance of blanket certificates to Hinshaw pipelines to provide open access transportation service "to the same extent that, and in the same manner" as intrastate pipelines are authorized to perform such service by Subpart C.

5. The Commission currently has less stringent transactional reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines, than for interstate pipelines. In Order No. 637,[12] the Commission revised the reporting requirements for interstate pipelines in order to provide more transparent pricing information and to permit more effective monitoring for the exercise of market power and undue discrimination. As adopted by Order No. 637, § 284.13(b) requires interstate pipelines to post on their Internet Web sites basic information on each transportation and storage transaction with individual shippers, including revisions to a contract, no later than the first nomination under a transaction. This information includes:

- The name of the shipper.
- The contract number (for firm service).
- The rate charged.
- The maximum rate.
- The duration (for firm service).
- The receipt and delivery points and zones covered.
- The quantity of natural gas covered.
- Any special terms or details, such as any deviations from the tariff.
- Whether any affiliate relationship exists.

6. Section 284.13(c) of the Commission's regulations also requires interstate pipelines to file with the Commission on the first business day of each calendar quarter an index of its firm transportation and storage customers and to publish the same information on their Web sites. The information required to be included in the Index of Customers does not include the rates paid by the customers. Section 284.13(e) requires interstate pipelines to file semi-annual reports of their storage injection and withdrawal activities, including the identities of the

[2] 15 U.S.C. 3372.

[3] Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction those pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include section 1(c). *See ANR Pipeline Co.* v. *Federal Energy Regulatory Comm'n,* 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

[4] This Final Rule does not eliminate or revise § 284.126(c) and the corresponding Form No. 537, which require a semi-annual storage report.

[5] 15 U.S.C. 3371(c).

[6] *EPGT Texas Pipeline,* 99 FERC ¶ 61,295 at 62,252–3 (2002).

[7] *Certain Transportation, Sales, and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act,* Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824–25 (1980).

[8] *See* 18 CFR §§ 284.7(b), 284.9(b) and 284.122.

[9] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1002–1003 (D.C. Cir. 1987) (*AGD*); *Mustang Energy Corp.* v. *Federal Energy Regulatory Comm'n,* 859 F.2d 1447, 1457 (10th Cir. 1988), *cert. denied,* 490 U.S. 1019 (1988); *see also EPGT Texas Pipeline,* 99 FERC ¶ 61,295 (2002).

[10] *Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 436, FERC Stats. & Regs. ¶ 30,665, at 31,502 (1985).

[11] *Pipeline Service Obligations, and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol,* Order No. 636–B, 61 FERC ¶ 61,272, at 61,992 n.26 (1992), *order on reh'g,* 62 FERC ¶ 61,007 (1993), *aff'd in part and remanded in part sub nom. United Distribution Cos.* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996), *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[12] *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services,* Order No. 637, FERC Stats. & Regs. ¶ 31,091, *clarified,* Order No. 637–A, FERC Stats. & Regs. ¶ 31,099, *reh'g denied,* Order No. 637–B, 92 FERC ¶ 61,062 (2000), *aff'd in part and remanded in part sub nom. Interstate Natural Gas Ass'n of America* v. *FERC,* 285 F.3d 18 (D.C. Cir. 2002), *order on remand,* 101 FERC ¶ 61,127 (2002), *order on reh'g,* 106 FERC ¶ 61,088 (2004), *aff'd sub nom. American Gas Ass'n* v. *FERC,* 428 F.3d 255 (D.C. Cir. 2005).

customers, the volumes injected into and withdrawn from storage for each customer and the unit charge and total revenues received. Order No. 637 did not modify the reporting requirements for NGPA section 311 intrastate pipelines and Hinshaw pipelines provided in § 284.126(b) and (c) of the Commission's regulations.

7. Section 284.126(b) of the Commission's regulations requires intrastate pipelines to file with the Commission annual reports of their transportation transactions, but not their storage transactions. Those Form No. 549 reports must include the following information:

- The name of the shipper receiving transportation service.
- The type of service performed (*i.e.* firm or interruptible).
- The total volumes transported for the shipper, including for firm service a separate statement of reservation and usage quantities.
- Total revenues received for the shipper, including for firm service a separate statement of reservation and usage revenues.

8. Unlike the interstate pipelines' reporting requirement (§ 284.13(b)), the current version of § 284.126(b) does not require intrastate pipelines to include in these Form No. 549 reports the rate charged under each contract, the duration of the contract, the receipt and delivery points and zones or segments covered by each contract, whether the contract includes any special terms and conditions, and whether there is an affiliate relationship between the pipeline and the shipper.

9. Section 284.126(c) requires Section 311 intrastate pipelines and Hinshaw pipelines to file Form No. 537, a semi-annual report of their storage activity, within 30 days of the end of each complete storage and injection season. This requirement is substantially the same as the § 284.13(e) requirement that interstate pipelines file such semi-annual reports of their storage activity.

B. The NOPR

10. In November 2008, the Commission issued a Notice of Inquiry (NOI), requesting comments on whether the Commission should impose additional reporting requirements on NGPA section 311 intrastate pipelines and on Hinshaw pipelines.[13] The NOI stated that, in a contemporaneous order, the Commission was denying a request by interstate storage provider with market based rates[14] for waiver of the requirements that interstate pipelines post the rates charged in firm and interruptible transactions no later than first nomination for service. In that order, the Commission held that the fact some interstate storage companies have been authorized to charge market-based rates does not justify exempting them from the requirements in section 284.13(b) that they post the rates charged in each storage transaction. The *SGRM* order held that the existing posting requirements for interstate pipelines are necessary to provide shippers with the price transparency they need to make informed decisions, and the ability to monitor transactions for undue discrimination and preference.[15] The Commission also found that the requested exemption would be contrary to NGA section 4(c)'s requirement that "every natural gas company * * * keep open * * * for public inspection * * * all rates."[16]

11. However, in recognition of interstate storage providers' concern about the competitive effects of the disparate reporting requirements for interstate pipelines and section 311 intrastate pipelines, the NOI stated that the Commission was interested in exploring (1) whether the disparate reporting requirements for interstate and intrastate pipelines have an adverse competitive effect on the interstate pipelines and (2) if so, whether the Commission should modify the posting requirements for Section 311 intrastate pipelines and Hinshaw pipelines in order to make them more comparable to the § 284.13(b) posting requirements for interstate pipelines. Accordingly, the Commission sought comments to assist it in evaluating whether changes in the Commission's posting requirements should be considered in order to remove any competitive disadvantage for interstate pipelines, as compared to intrastate pipelines providing interstate transportation and storage services under Section 311 of the NGPA and to Hinshaw pipelines providing such service pursuant to a § 284.224 blanket certificate.

12. Based upon a review of the comments received in response to the NOI, the Commission issued a Notice of Proposed Rulemaking (NOPR),[17] proposing to revise its transactional reporting requirements for intrastate and Hinshaw pipelines in order to increase market transparency, without imposing unduly burdensome requirements on those pipelines. The Commission proposed to increase the availability and usefulness of the transactional information reported by intrastate and Hinshaw pipelines by requiring that (1) the existing annual § 284.126(b) transactional reports be filed on a quarterly basis, (2) the quarterly reports include certain additional types of information and cover storage transactions as well as transportation transactions, (3) the quarterly reports be filed in a uniform electronic format and posted on the Commission's Web site, and (4) the reports must be public and may not be filed with information redacted as privileged.

13. The Commission invited all interested parties to comment on all aspects of the NOPR. The Commission also elaborated on the proposed uniform electronic format in a separate Notice Requesting Comments On Proposed Standardized Electronic Information Collection (Information Notice).[18]

14. Comments on the NOPR and Information Notice were due on November 4, 2009. Sixteen parties filed comments. A list of Commenters and Abbreviations is included as an appendix to this order. Most commenters were Section 311 or Hinshaw pipelines or their associations, but interstate pipelines, exploration & production companies, and an association of municipal consumers also filed comments. We discuss the comments below in the context of reviewing, amending, and promulgating each aspect of this Final Rule.

III. Statutory Authority for the Rule

15. In this section, we address contentions by some commenters that the Commission lacks authority under NGPA section 311 to require intrastate pipelines to file more detailed transactional reports. While some commenters contest specific aspects of our proposal as it affects Hinshaw pipelines, no commenter questions the Commission's general authority under NGA sections 4 and 10 to require Hinshaw pipelines to file more detailed transactional reports.

A. NOPR

16. In the NOPR, the Commission stated that NGPA section 311(c) authorizes the Commission to prescribe the "terms and conditions" under which intrastate pipelines perform interstate service. The NOPR concluded that its proposal to require intrastate pipelines to file and make public the proposed

[13] *Contract Reporting Requirement of Intrastate Natural Gas Companies,* FERC Stats. & Regs. ¶ 35,559 (2008).

[14] SG Resources Mississippi, L.L.C. (SGRM).

[15] *SGRM,* 125 FERC ¶ 61,191 (2008).

[16] 15 U.S.C. 717c(c).

[17] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* FERC Stats. & Regs. ¶ 32,644 (2009) (NOPR).

[18] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* FERC Stats. & Regs. ¶ 35,051 (2009) (Information Notice).

transactional reports so that shippers and others can monitor NGPA section 311 transactions for undue discrimination is well within the Commission's broad conditioning authority under § 311(c).

B. Comments

17. TPA claims that the Commission lacks statutory authority to enact the proposed regulations, arguing that "Congressional intent [was] that transactions under NGPA Section 311 are to be subjected to minimal regulation." [19] Enogex, along with TPA, adds that the proposed reporting requirements are "in direct contravention of Section 311 of the NGPA and the legislative intent," because compliance would be "unduly burdensome," and because disclosure would harm the pipelines' business position.[20]

18. Other commenters, citing the legislative history of the NGPA, argue that the proposed regulations are lawful. Clayton Williams states that "to the extent the intrastate pipeline is involved in an authorized" interstate transaction, the Commission has jurisdiction to review that transaction.[21] Similarly, Texas Alliance argues that claims of undue burden are too conclusory, and that the NGPA's jurisdiction is actually based on whether a given activity of a Section 311 pipeline is interstate or intrastate.[22] Clayton Williams argues that it is the purpose of Section 311 to "help integrate gas markets," and that "reasonable rules have always been part of the 311 world." [23] Further, Apache argues for even more frequent and detailed reporting, stating, "the Commission has jurisdiction and discretion to require * * * [intrastate] pipelines to report the same information during the same time frame about natural gas transactions that the interstate pipelines are required to report." [24] Apache reasons "that interstate pipelines and Section 311 and Hinshaw pipelines are held to the same prohibition on undue discrimination," [25] so the transparency regulations necessary to ensure compliance should be the same as well.

C. Commission Determination

19. The Commission's statutory authority to impose reporting requirements on Section 311 pipelines derives from NGPA section 311(c), which states, "any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe." [26] This blanket authority is well-established as the ground for the previous reporting requirements for Form No. 549. As the Commission reasoned in the rulemaking establishing a previous version of this reporting requirement, "section 311 tasks the Commission with the responsibility to ensure rates and charges are fair and equitable. For the Commission to carry out this responsibility, it is important for rates charged to be reported." [27] None of the commenters in this docket challenge the legality of the previous reporting requirements. The new reporting requirements are not so different in scope or burden as to generate serious questions about the Commission's long-established statutory authority to require transactional reporting.

20. TPA's characterization that the NGPA limits the Commission to "minimal regulation," [28] is misleading and unsupported. While Congress sought to encourage intrastate pipelines to participate in the interstate transportation market by enabling them to do so without bearing the burden of full Commission regulation under the NGA,[29] this does not mean that Commission regulation under NGPA section 311 was to be minimal. In *Associated Gas Distributors* v. *FERC,*[30] the court affirmed the Commission's use of its NGPA section 311(c) conditioning authority to impose conditions necessary to assure that section 311 intrastate pipelines do not engage in undue discrimination. The court also stated "that the Commission has been correct in its belief that under § 311 it should assert the traditional regulatory approach in areas where it is needed to protect the public from market dominance by natural gas companies." [31] Requiring intrastate pipelines to file quarterly transactional reports to permit the Commission, shippers, and others to monitor for undue discrimination is fully within the scope of this conditioning authority.

21. While the Commission will consider the burden question in more detail below, commenters have provided no persuasive evidence that the Final Rule is somehow so burdensome as to be beyond Commission's jurisdiction. As compared to the requirements for interstate pipelines, the Final Rule is limited in the scope of the reports, the burden of publishing a report, and the frequency of the reports. As discussed below, the Commission held itself to these limitations so that the § 284.126(b) requirements should remain lighter than the § 284.13(b) interstate requirements and so that the value of the increased flow of information exceeds the increased burden of reporting. Any further lightening would risk undermining the Final Rule's ability to increase transparency and improve the functioning of the transportation market.

IV. Need for the Rule

A. NOPR

22. Upon review of the comments received in response to the NOI, the Commission held that its primary goal in revising the transactional reporting requirements for intrastate and Hinshaw pipelines would be to increase market transparency.[32] As the Commission reasoned, "[t]ransactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination." [33] The Commission found that certain types of additional information should be published in order to enable shippers, other market participants, and the Commission "to determine the extent to which particular transactions are comparable to one another," [34] a prerequisite for determining the rights of similarly situated shippers and for detecting undue discrimination.

23. The Commission stated in the NOPR that it "believes that the revised reporting requirements * * * avoid[ ] unduly burdensome requirements that might discourage * * * participating in the interstate market." [35] In proposing

[19] TPA at 2. *See also id.* at 12, 13, 16.

[20] Enogex at 6. Enogex and several other commenters also raise this concern as a policy argument instead of an argument on statutory authority; these policy arguments are addressed in the subsequent section on the Need for the Rule.

[21] Clayton Williams at 4 (quoting H.R. Rep. No. 543, 95th Cong. 1st Sess. 45 (1977)).

[22] Texas Alliance at 8.

[23] Clayton Williams at 3–4.

[24] Apache at 3.

[25] Apache at 6.

[26] 15 U.S.C. 3371(c).

[27] *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies,* Order No. 581, 60 FR 53019, 53050–51, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g,* Order No. 581–A, FERC Stats. & Regs. ¶ 31,032 (1996) (Order No. 581).

[28] TPA at 2.

[29] *Mustang Energy Corp.* v. *Federal Energy Regulatory Comm'n,* 859 F.2d 1447, 1457 (10th Cir. 1988), *cert. denied,* 490 U.S. 1019 (1988); *see also EPGT Texas Pipeline,* 99 FERC ¶ 61,295 (2002).

[30] 824 F.2d 981, 1002–1003 (D.C. Cir. 1987) (*AGD*).

[31] *Id.* at 1018 (citation omitted).

[32] NOPR at 1, 16.

[33] NOPR at 16.

[34] NOPR at 19.

[35] NOPR at 17.

the frequency, content, and format of the reports, the Commission sought the best balance of minimizing the reporting burden and maximizing the competitive effects on the markets. For example, the Commission proposed to host reporting data on its own Web site, and encouraged intrastate pipelines to comment on the preferred file format, in order to help the Commission lessen the information technology burden for pipelines.[36]

B. Comments

24. Several intrastate pipelines argue that the Commission failed to identify sufficiently compelling reasons for revising the reporting requirements. These commenters argue that further transparency is unnecessary, or that the proposal would have little practical benefit.[37] Enogex, for example, argues that "[i]n view of the minimal amount of concern expressed by interstate pipelines * * * the Commission should have terminated this proceeding."[38] AOG suggests that the Commission should, if not abandon the proposal, at least "more narrowly tailor[it] to address a perceived problem [regarding] * * * transparency."[39] TPA claims that further transparency in the section 311 and Hinshaw transportation and storage markets is not needed because the United States' natural gas commodity sales hubs are the most price-transparent in the world.[40] TPA further complains that commenters have yet to "cite[ ] any specific examples of adverse market impacts" from the *status quo,* and "no entity has asked the Commission to expand the Section 311 reporting requirements to increase transparency," and is therefore "not reasoned decision making."[41]

25. Several pipelines argue that the new regulations place them at a competitive disadvantage compared to pipelines that only operate under the NGA or under state jurisdiction, or compared to shippers. Similarly, several pipelines complain that the current proposal could be too burdensome,[42] potentially causing some pipelines to abandon the Section 311 or Hinshaw markets.[43]

26. Enogex and Enstor contend that the proposed reporting requirements would harm NGPA section 311 storage providers with market-based rates. Enogex argues that letting competitors see its rate information would limit its own ability to "capture rates", calling it "tantamount to rescinding market-based rate authority."[44] Enogex asserts the Commission should at least exempt storage services provided at market-based rates.

Enogex argues that sufficient public information already exists on storage services, and that the Commission has stated when it authorizes market-based rates that such providers lack market power, thus reducing the need for regulatory scrutiny.[45] Enstor is also concerned that the proposed reporting requirements, particularly the requirement to report quarterly revenues received from each storage customer, would allow customers "to recreate the storage positions" that resulted in another customer receiving favorable rates.[46] Shippers, Enstor argues, should not have more information about the pipeline than the pipeline has about its shippers.

27. Atmos goes further, warning "of potential collusion or other anticompetitive behaviors that can be facilitated by untimely public disclosure of transaction-specific information."[47]

28. Other commenters, however, applaud the NOPR, arguing that the information sought in the reports would help enable the market to function more efficiently. Cities, Clayton Williams, and Texas Alliance ask the Commission to expand reporting requirements in order to provide greater transparency, especially in the Texas market.[48] Cities and others contend that this "lack of competition in the intrastate pipeline market in Texas" could be ameliorated by "making information and records available both to the public and to shippers."[49] For example, Clayton Williams provides a detailed narrative suggesting that it could have pursued allegations that a pipeline has been engaging in unlawful business practices, if only it had more publicly available information to support its allegation.[50]

29. These commenters further argue that lack of transparency harms the integrity of national price indices,[51] and that the Commission's proposed new regulations will help state-level transparency, and thus state-level markets, as well.[52] Apache also responds to TPA's argument that interstate pipelines have not sought out the proposed regulation: "It can be expected that most interstate pipelines would hope to levelize the playing field by eliminating regulation for all pipelines, rather than increasing regulation for all."[53] However, Apache urges, new regulations are warranted based on the expected usefulness of improved access to market information.

30. These commenters also argue that publicly available data is vital to eliminate unfair advantages.[54] For example, Apache argues that intrastate and interstate pipelines both face the same economic environment and therefore should report the same information.[55] Constellation argues that existing regulations harm the market by leaving shippers without enough information to "make fully informed purchasing decisions."[56] Texas Alliance and Clayton Williams, likewise, argue that transparency helps limit the abuse of the monopoly power that some pipelines have over upstream shippers.[57]

31. Commenters also dismiss the notion that the current proposal could be too burdensome.[58] Apache argues, "[a] Section 311 pipeline is not going to forego the opportunity to earn money merely because it must comply with a transactional posting requirement."[59] As Texas Alliance phrases it, the reason why the rulemaking "is so strongly opposed by the Texas intrastate pipelines and their association [is that i]t threatens to let sunshine in where they prefer the dark."[60]

C. Commission Determination

32. In this Final Rule, the Commission is adopting the proposed quarterly transactional reporting requirements for section 311 and Hinshaw pipelines, with several clarifications discussed in subsequent sections of this rule. The Commission finds that these transactional reporting requirements appropriately balance the need for increased transparency of intrastate and Hinshaw pipeline transactions, while

[36] NOPR at 28–29.

[37] *E.g.,* OneOK at 3, TPA at 3.

[38] Enogex at 5.

[39] AOG at 1.

[40] TPA at 11.

[41] TPA at 2, 4, 10.

[42] *E.g.,* AGA at 7; AOG at 7; Jefferson at 2, 6.

[43] *E.g.,* Enogex at 8; TPA at 14.

[44] Enogex at 8.

[45] Enogex at 11–12.

[46] Enstor at 7.

[47] Atmos at 5 (citing *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, FERC Stats. & Regs. ¶ 31,260 at P. 88 (2007); *order on reh'g, Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–A, FERC Stats. & Regs. ¶ 31,275 (2008); *order on reh'g, Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–B, 125 FERC ¶ 61,302 (2008)).

[48] Cities at 3; Clayton Williams at 1; Texas Alliance at 8.

[49] Cities at 2, 4.

[50] Clayton Williams at 5–15.

[51] Texas Alliance at 4.

[52] Cities at 4; Texas Alliance at 6.

[53] Apache at 8.

[54] *E.g.,* Yates at 6.

[55] Apache at 7–8.

[56] Constellation at 4.

[57] Texas Alliance at 9–10; Clayton Williams at 12.

[58] *E.g.,* Yates at 7.

[59] Apache at 8.

[60] Texas Alliance at 3.

avoiding unduly burdensome requirements that might discourage such pipelines from participating in the interstate market.

33. Transactional information provides price transparency so shippers can make informed purchasing decisions, and also permits both shippers and the Commission to monitor actual transactions for evidence of possible abuse of market power or undue discrimination. The existing reporting requirements in § 284.126 are inadequate for this purpose. For example, the annual reports of transportation transactions required by existing § 284.126(b) do not include (1) the rates charged by the pipeline under each contract, (2) the receipt and delivery points and zones or segments covered by each contract, (3) the quantity of natural gas the shipper is entitled to transport, store, or deliver, (4) the duration of the contract, or (5) whether there is an affiliate relationship between the pipeline and the shipper. Similarly, the semi-annual storage reports required by existing § 284.126(c) do not include the rates charged by the storage provider in each contract, the duration of each contract, or whether there is an affiliate relationship between the storage provider and its customer.

34. However, all this information is necessary to allow the Commission, shippers, and others to determine the extent to which particular transactions are comparable to one another for purposes of monitoring for undue discrimination. For example, contracts for service on different parts of a pipeline system or with different durations may not be comparable to one another. In addition, the requirement that affiliate relationships between the pipeline and its shippers be reported will allow the Commission and interested parties to monitor whether the pipeline is favoring its affiliates. The additional information required to be reported by the Final Rule is also necessary to allow shippers to make informed decisions about their capacity purchases. Shippers need to know the price paid for capacity over a particular path to enable them to decide, for instance, how much to offer for the specific capacity they seek.

35. The Commission also finds that the lack of transparency ultimately harms not only shippers, but the pipelines themselves, whose individual actions to protect market advantage work collectively to make intrastate transportation less attractive. Without transparency and trust, efficient free-market allocation of resources is not possible. As the specific example reported by Clayton Williams shows, the current market's lack of transparency fosters, at the very least, an atmosphere of mistrust. While TPA may plausibly assert that natural gas commodity sales hubs are the most price-transparent commodity markets in the world, the same cannot be said of the market for intrastate transportation. It is the Commission's obligation to ensure transparency at all stages of the natural gas market over which it has jurisdiction, because inefficiencies and unfair treatment in one stage of the market can lead to harm elsewhere in the market. Accordingly, we find that there is a need for revised regulations that improve market transparency.

36. Exempting storage services provided at market-based rates is also unwarranted. A Commission finding that a service provider lacks market power should not be read to mean that its shippers are at no risk of undue discrimination or other unlawful practices. Furthermore, it is still in the public interest to disseminate market information concerning the transactions of market-based storage services. As the Commission reasoned in a previous rulemaking, "[i]t is even more critical for the Commission to review pricing when the Commission is relying on competition to regulate rates, rather than scrutinizing the underlying cost of service. Thus, we will not exempt intrastate storage companies charging market-based rates from the requirement to file * * * reports."[61] Posting rates charged in previous market-based transactions leads to greater transparency and competition. As the Commission found, in Order No. 637–A, with respect to alleged competitive harm to individual firms:

> While disclosure of the transactional information may cause some commercial disadvantage to individual entities, it will benefit the market as a whole, by improving efficiency and competition. Buyers of services need good information in order to make good choices among competing capacity offerings. Without the provision of such information, competition suffers.[62]

37. Further, we are convinced the burdens to respondents will be small relative to the gains that the new regulations will bring to the market. The burden test goes to the heart of our regulatory authority: One purpose of the NGPA was to induce intrastate pipelines to participate in the interstate market by ensuring that it would not be unduly burdensome to do so.[63] As discussed in more detail below, we are minimizing the burden of these new transactional reporting requirements in several ways. For example, we are not imposing a daily posting requirement, such as we have required of interstate pipelines. Therefore, the transactional reports required by the Final Rule will not require section 311 and Hinshaw pipelines to maintain internet Web sites. We are also clarifying several of the specific proposed reporting requirements as requested by commenters in a manner that should reduce the burden of compliance. Finally, while the reports must be filed in a standardized electronic format, the Commission will develop an electronic form in a PDF format that can be downloaded from the FERC Web site and saved to a user's computer desktop. In addition, the Commission will develop an XML Schema that can be used by Respondents who wish to file an XML file.

38. In addition, since the establishment of the first intrastate pipeline reporting requirements, electronic communications have reduced the cost of reporting transactional information. Given these advances in data management, collecting and compiling information for the proposed quarterly reports should be no more burdensome at present than it was to manage the lesser amount of information required when the Commission first established transactional reporting for intrastate pipelines.

39. We consider the question of undue burden not only in isolation, but in the context of a pipeline's entire jurisdictional business, and relative to the benefits to the market.[64] The new

[61] *Revisions to Uniform System of Accounts, Forms, Statements, and Reporting Requirements for Natural Gas Companies,* Order No. 581, 60 FR 53019, 53051, FERC Stats. & Regs. ¶ 31,026 (1995), *order on reh'g,* Order No. 581–A, FERC Stats. & Regs. ¶ 31,032 (1996) (Order No. 581).

[62] Order No. 637–A, at 31,614–615. Enstor is concerned that the requirement to include the revenues received from each interruptible storage customer during a quarter will cause competitive damage, alleging that such information will allow customers to recreate the storage positions that resulted in another customer receiving favorable rates. However, the existing semi-annual storage reports required by § 284.126(c) already require the reporting of revenues received from each customer. Increasing the frequency of such revenue reports from semi-annually to quarterly would not appear to significantly affect this concern.

[63] *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 1001–1003 (D.C. Cir. 1987).

[64] *See, e.g., Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704–A, FERC Stats. & Regs. ¶ 31,275 at P 17 (2008) ("While we acknowledge that removing purchases from volumes that must be reported on Form No. 552 would somewhat reduce the reporting burden on certain market participants, we continue to believe that the substantial benefits of having such data publicly available outweigh this burden."), *order on reh'g,* Order No. 704–B, 125 FERC ¶ 61,302 (2008).

Continued

requirements aim to empower shippers "to determine the extent to which particular transactions are comparable to one another."[65] In this way, the Commission gives shippers increased ability to protect themselves from undue discrimination, and thus be less dependent on Commission investigations to protect their rights. The new reporting requirements also provide information that may assist state and local regulatory bodies, without interfering in their autonomy of action.

40. In response to the pipelines that suggest that they have an overriding confidentiality interest, or that even raise the specter that increased transparency may cause unlawful behavior, we disagree. The Commission's decades of experience in enforcement have confirmed the wisdom of what jurists have long held in the related realm of financial disclosure: "confidentiality interest is not absolute, however, and can be overcome by a sufficiently weighty government purpose. * * * 'Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.' "[66]

V. Details of Pipeline Posting Requirements

A. Overview and Summary of Requirements

41. The Final Rule, in accordance with the NOPR, requires Form No. 549D transactional reports under § 284.126(b) to be filed on a quarterly basis, to include certain additional types of information and cover storage as well as transportation, and to be filed in a uniform electronic format and posted on the Commission's Web site without redaction.

42. In addition, the Final Rule clarifies or amends the NOPR on several points elaborated below. We clarify that pipelines are to file their Form No. 549D transactional reports on a contract-by-contract basis for each shipper, rather than on a transaction-by-transaction basis. We adopt a common identification requirement for shippers. For receipt and delivery points, however, pipelines need only use an industry common code where one is already in use, and may report wells and other gathering systems in the aggregate. We clarify that pipelines should continue to only report on their jurisdictional activities. Finally, we provide several clarifications regarding the data format and technical protocols, with the result being a flexible framework similar to the "simple spreadsheet" concept proposed by some commenters.

B. Definition of Reportable Service

1. NOPR

43. The version of § 284.126(b)(1) proposed in the NOPR calls for a quarterly report that contains information on "each transportation and storage service provided." Neither the proposed regulations nor the preamble to the NOPR directly defined the word "service." In the preamble, in the context of rejecting daily posting, the Commission rejected the option of "daily postings of information about individual transactions."[67] However, the preamble also states that pipelines should report "additional information concerning each transaction."[68]

2. Comments

44. Some commenters express concern that the NOPR's phrasing is unclear as to whether pipelines are to make their reports on a contract-by-contract basis or a transaction-by-transaction basis.[69] They point out that a shipper may schedule numerous transactions during a quarter under a single contract. For example, a shipper may have a single interruptible contract, but may schedule separate transactions at different rates using different receipt and delivery points on a daily basis. AGA, for example, "urges the Commission to clarify that Hinshaw pipelines are required to report their 'contracts' on a quarterly basis in a manner similar to what they currently report [rather than r]equiring information to be reported separately for each individual 'transaction.' "[70] Other commenters are concerned that the Commission intends to require separate reports for each transaction. TPA, for example, complains that under "the onerous approach * * * proposed in the NOPR," a pipeline with "multiple daily transactions under single contracts could [be] * * * reporting thousands of individual transportation transactions."[71]

45. Apache and Jefferson take the opportunity to propose alternative approaches to the question of what should be reported. Apache argues that "[f]ull transparency regarding all natural gas transactions on a real-time basis, comparable to the reporting requirements of interstate pipelines, is the only comprehensive way to protect natural gas consumers to ensure the integrity of the market."[72] Nevertheless, Apache clarifies that it supports the NOPR as "a helpful improvement over the status quo."[73] Jefferson argues that the level of detail proposed in the NOPR for the reports is too burdensome and too far beyond what is required to address the actual disparities between interstate and intrastate reporting.[74] Accordingly, Jefferson proposes limiting the report to 22 fields.[75]

3. Commission Determination

46. We clarify that pipelines are to report the required transactional information in Form No. 549D on a contract-by-contract basis for each shipper, rather than on a transaction-by-transaction basis. In general, a pipeline will be required to make a separate data entry for each of a shipper's contracts under a given rate schedule. The pipeline should aggregate all nominations and shipments under each contract for the quarter. In other words, while the reports will contain information on each transaction, that information will be aggregated by contract for each shipper for each type of service provided.

47. If the pipeline charges a shipper multiple prices for different transactions or shipments under a single contract and service, the pipeline would still file a single report for that contract, with the following information. The pipeline would report the volume-weighted average rate charged under that contract for the quarter. The pipeline would also include a list of all the various rates charged during the quarter in the appropriate comment field for that contract. The pipeline would not be required to state the volumes associated with each rate or the dates each rate was charged. Similarly, the pipeline would list the receipt and delivery points used during each quarter for each contract, but is not required to separately report

See also Pipeline Posting Requirements under Section 23 of the Natural Gas Act, Order No. 720, 73 FR 73494, FERC Stats. & Regs. 31,283, at P 56 (2008) ("We also believe that the goals of this Final Rule outweigh the burdens to be placed upon non-interstate and interstate pipelines."); *order on reh'g,* Order No. 720–A, FERC Stats. & Regs. ¶ 35,302, at P 116 (2010) ("The Commission understands commenters' arguments that posting new points on a rolling basis would be burdensome for major non-interstate pipelines, but believes that these burdens are overstated and substantially outweighed by the transparency benefit of timely posting of newly eligible points.").

[65] NOPR at 19.

[66] *Statharos* v. *New York City Taxi & Limousine Comm'n,* 198 F.3d 317, 323 (2d Cir. N.Y. 1999) (citing Louis Brandeis, *Other People's Money and How the Bankers Use It* 62 (1914)).

[67] NOPR at 25.

[68] NOPR at 20.

[69] *E.g.,* Jefferson at 11.

[70] AGA at 2; *see also* AGA at 9–10.

[71] TPA at 4–5.

[72] Apache at 3.

[73] Apache at 3.

[74] Jefferson at 16.

[75] Jefferson at 15–16.

the rates charged and volumes received and delivered at each point.

48. We decline the opportunity to radically alter the type of information reported, as suggested by Apache and Jefferson. Based on the comments in this docket, the Commission believes that refinements to the NOPR are more certain to ensure a fair balance of the additional transparency benefits that would accrue to the market versus the administrative costs of compliance.

C. Reporting Frequency

1. NOPR

49. In the NOPR, the Commission found that increasing the frequency of the § 284.126(b) transactional reports from annual to quarterly would provide market participants and the Commission with more timely and more useful information concerning the transactions entered into by intrastate pipelines. The Commission stated that it sought to balance the benefits of increased transactional transparency against the need to avoid creating undue burden for the responding pipelines. The Commission highlighted that "one primary difference will remain between the reporting requirements for interstate pipelines and the Section 311 and Hinshaw pipelines: Interstate Pipelines will post transactional information daily on their Web sites, while Section 311 and Hinshaw pipelines will submit this information in a quarterly report to the Commission." [76] The Commission noted alternative proposals from commenters, but found that a quarterly filing requirement would strike the appropriate balance.

2. Comments

50. Most commenters support quarterly reporting. Even some parties who urge the Commission to cancel the rulemaking docket nevertheless state that they could accept limited quarterly reporting.[77] Some shippers, while generally supportive of the NOPR, state that they would prefer daily reporting is the best way to ensure transparency and competitive markets.[78] The pipelines, however, consider the possibility of daily reporting to be "very costly, particularly if daily posting on a Web site was required," [79] due "to the [sheer] volume of reporting" of each day's transactions.[80]

3. Commission Determination

51. The Final Rule adopts the NOPR's proposal to require quarterly reporting by section 311 and Hinshaw pipelines. The Commission continues to find that a quarterly reporting requirement strikes the appropriate balance of increasing transparency without imposing undue burdens on section 311 and Hinshaw pipelines. One purpose of the NGPA was to induce intrastate pipelines to participate in the interstate market by ensuring that it would not be unduly burdensome to do so.[81] This participation by intrastate pipelines eliminates the need for duplication of facilities between interstate and intrastate pipelines.[82] Thus, as the court has stated, "Congress intended that intrastate pipelines should be able to compete in the transportation market without bearing the burden of full regulation by FERC under the Natural Gas Act." [83]

52. In the NOPR, the Commission stated that a daily reporting requirement would require all intrastate and Hinshaw pipelines to maintain their own Web sites for this purpose, and such daily postings of information about individual transactions would be significantly more burdensome than a quarterly reporting requirement. As described above, several pipeline commenters have reaffirmed that a daily posting requirement would be very costly. In addition, Constellation, while stating that daily posting would provide more transparency, agrees that at this time such a requirement appears unduly burdensome.[84]

53. Only two commenters request that the Commission require daily reporting. They contend that real-time reporting of individual transaction data would allow more immediate monitoring of whether the pipeline is engaging in undue discrimination and provide more useful price transparency. The Commission recognizes that daily posting could enable shippers and others to observe potentially discriminatory actions more quickly. However, the quarterly reports will provide similar information, enabling shippers and others to file complaints if they believe such information suggests a pattern of discrimination by the pipeline. Given the interest in avoiding placing undue burdens on section 311 and Hinshaw pipelines, the Commission finds that the quarterly reporting requirement, together with our other changes to the reporting requirements including the requirement that all reports be public, appropriately balances the need for more transparency with the interest in encouraging section 311 and Hinshaw pipelines to participate in the interstate pipeline grid.

D. Identification of Receipt and Delivery Points and Shippers

1. NOPR

54. The NOPR proposed requiring intrastate pipelines to report several new elements of information, among them the primary receipt and delivery points covered by the contract. The NOPR proposed that the reports include the "industry common code" for each receipt and delivery point in order to minimize any ambiguity as to what receipt and delivery points are being reported and to ensure that all reporting pipelines identify such points in a consistent manner.[85] Similarly, the NOPR proposed that, when reporting the identity of a given shipper, respondents should include not only the full legal name, but also an "identification number" for each shipper.[86]

55. However, the NOPR stated that, while the Commission was aware of some shipper identification standards and receipt and delivery point codes that are used in the natural gas industry (for example, Dun & Bradstreet, Inc.'s D–U–N–S identification numbers for shippers), the Commission was reluctant to choose any particular standard without input as to that standard's cost-effectiveness and usefulness. Accordingly, the Commission sought comment on two related questions: (1) What sort of shipper identification numbers and receipt and delivery point common industry codes are currently used or readily available to section 311 and Hinshaw pipelines?; and (2) Which shipper identification standard or standards and receipt and delivery point codes, if any, should be used?[87]

2. Comments

56. Some commenters argue that using industry common codes to report receipt and delivery points would be highly burdensome, due to the cost of obtaining common code identifiers from a third-party registry. According to Jefferson, the annual charge for licensing common location codes is

[76] NOPR at P 23.

[77] TPA at 6; Atmos at 5.

[78] Apache at 2–3; Constellation at 4; Yates at 5–6.

[79] Duke at 5.

[80] TPA at 20.

[81] *AGD,* 824 F.2d at 1001–1003.

[82] *EPGT Texas Pipeline, L.P.,* 99 FERC ¶ 61,295 at 62,252.

[83] *Mustang Energy Corp.* v. *Federal Energy Regulatory Comm'n,* 859 F.2d 1447, 1457 (10th Cir. 1988), *cert. denied,* 490 U.S. 1019 (1988); *see also EPGT Texas Pipeline,* 99 FERC ¶ 61,295 (2002).

[84] Constellation at 4.

[85] NOPR at P 33.

[86] NOPR at P 33.

[87] NOPR at P 34.

$1,670 for 1–20 points, $3,506 for 21–100 points, and $5,428 for 100+ points.[88] Enogex protests that it "does not have 'primary' and 'secondary' points on its system, but rather uses standard receipt and delivery points. As a result, Enogex does not have * * * common codes," and urges that the Commission reject this element as "base[d] * * * on the business practices of interstate pipelines."[89] TPA voices similar concerns. Jefferson and ONEOK suggest letting respondents use their own meter codes instead. AGA suggests, as a compromise, that pipelines that do not already use common codes should be allowed "to use an interstate pipeline's Data Reference Number (DRN) for points of interconnection with an interstate pipeline and use [their own] proprietary code where a DRN has not already been assigned."[90]

57. AOG and Cranberry, whose pipelines perform gathering functions, state that they do not keep organized records of who has contract rights to which receipt or delivery points.[91] AOG proposes that, instead of differentiating among receipt points that are gas wells, they "would simply identify all receipt points as 'AOG system.'"[92] Cranberry proposes that the Commission waive the requirement to report receipt and delivery points where, as with their system, all shippers have access to all or numerous points, and no common industry codes exist.[93]

58. The proposal to require use of standardized shipper identification numbers also raised some concerns. Jefferson estimated that "it will cost approximately $24,000 annually to utilize a third-party service to verify a unique shipper identification number such as a D–U–N–S® number," and suggests removing this requirement.[94] TPA likewise argues that intrastate providers would have no use for D–U–N–S numbers other than filing the proposed reports. TPA proposes having the public reports only "contain coded references to individual shippers and points, with the key to the code available to the Commission" for investigation but otherwise kept confidential; in the alternative TPA suggests that the exact legal name of the shipper should be sufficient.[95] Most pipelines, however, did not object to standardized shipper identification, and "AGA supports the use of the D–U–N–S® Number as a common company identifier."[96]

3. Commission Determination

59. We acknowledge the concern of some pipelines that requiring all pipelines to use industry common codes for receipt and delivery points could prove to be expensive, and we have adjusted § 284.126(b)(1)(iv) of the final regulations accordingly. Where respondents already use Industry Common Codes in their existing business practices (such as wherever an intrastate system interconnects with an NGA interstate system), they must use those codes in their reports. However, where respondents do not use Industry Common Codes, they should report using the same point identification system that they use for scheduling with shippers. In addition, respondents who do not use Industry Common Codes must publish a list of all the jurisdictional receipt and delivery point codes they use for scheduling, along with the county and state of each point, and the name of the jurisdictional pipeline (if any) that interconnects at each point. This list should be filed as a separate narrative alongside the respondent's initial report; if the list should change at any time, the respondent should include a narrative alongside its next quarterly report updating the list.

60. The Commission also acknowledges the particular challenges in reporting receipt points for systems that perform a gathering function. Accordingly, for gas received from dedicated wells or gathering lines, respondents may instead note as the receipt point the common point where the gathered gas is considered to enter the pipeline's transmission system. Respondents who use this method in their reports must develop their list of jurisdictional receipt and delivery points accordingly.

61. In contrast with receipt and delivery points, however, standardized shipper identification is not unduly burdensome in comparison to the benefit to the Commission and market participants of being certain of the true identity of a pipeline's shippers. As of the date that the Commission approves this Final Rule, we observe that it is possible to both create a D–U–N–S number[97] and search for any company's D–U–N–S number[98] for free. Further, since standardized shipper identification numbers, by their nature, do not change with time, respondents will not need to spend time verifying each number every quarter. Accordingly, the time and expense spent on verifying the identity of one's shippers should be reasonable.

E. Requests for Exemptions and Safe Harbor

1. NOPR

62. In the NOI, the Commission sought comment on whether any of the proposed reporting requirements should exempt certain classes of respondents, based on the type of service provided or on the respondent's size. Having considered the comments received, the Commission did not provide for any exemptions in the NOPR. The Commission reasoned that so long as reports were hosted on the FERC Web site and no more frequent than quarterly, they would not be unduly burdensome to prepare and file.[99]

2. Comments

63. AOG asks the Commission to exempt companies with *de minimis* jurisdictional activity. In particular, AOG suggests a cut-off "somewhere between 2.2 and 50 million MMBtu,"[100] or for entities with under 500 employees. ONEOK similarly argues that it should be excluded, but does not proffer a cut-off point.

64. In addition to the above exemption requests, AGA suggests two clarifications as a means of minimizing the burden for all respondents. First, AGA asks the Commission to "clearly state that Hinshaw pipelines are required to report only those contracts authorized by their limited jurisdictional certificates and are not required to report on retail or intrastate activities that are not regulated by the Commission."[101] Second, "AGA also recommends that the Commission explicitly state as part of the Final Rule in this proceeding that it will not prosecute, penalize or otherwise impose remedies on parties for inadvertent errors in reporting."[102]

3. Commission Determination

65. The Commission rejects the requests for exemptions based on size or type of activity. As the Commission reasoned in the NOPR, since the reports and data are to be hosted on the FERC Web site and filed no more frequently than quarterly, they should not be

[88] Jefferson at 9.

[89] Enogex at 12.

[90] AGA at 2.

[91] AOG at 6; Cranberry at 5.

[92] AOG at 10.

[93] Cranberry at 6.

[94] Jefferson at 9.

[95] TPA at 22.

[96] AGA at 2.

[97] *Available at http://smallbusiness.dnb.com/establish-your-business/12334338-1.html.*

[98] *Available at https://smallbusiness.dnb.com/ePlatform/servlet/DUNSAdvancedCompanySearch?storeId=10001&catalogId=70001.*

[99] *See, e.g.,* NOPR at P 14, 24.

[100] AOG at 8.

[101] AGA at 1; *see also* AGA at 8–9.

[102] AGA at 3; *see also* AGA at 15–16.

unduly burdensome to prepare and file. The Commission has not exempted any section 311 or Hinshaw pipelines from filing the existing reports required by § 284.126, using current Form No. 549. With the clarifications made to the technical protocols discussed below, the Commission is confident that, after the transition to the new reporting format, it will not be significantly more burdensome for pipelines to prepare and file each Form No. 549D report required by this rule, than it has been to file the existing Form No. 549 Intrastate Pipeline Annual Transportation report. In addition, if a pipeline has *de minimis* jurisdictional activity, it follows that it should have relatively few transactions to report, thereby minimizing its burden of completing the necessary report.

66. We grant AGA's requested clarification that Hinshaw pipelines are required to report only those contracts authorized by their limited jurisdictional certificates and are not required to report on retail or intrastate activities that are not regulated by the Commission. Similarly section 311 pipelines are only required to report contracts for NGPA section 311 interstate service, and not contracts for non-jurisdictional intrastate service.

67. In response to the AGA's second request, the Commission states that because Form No. 549D is a new information collection, we will focus any enforcement efforts on instances of intentional submission of false, incomplete, or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.[103]

F. Public Status of Reports

1. NOPR

68. The NOPR proposed to require that the reports filed pursuant to revised § 284.126(c) be posted without any information redacted as privileged. The Commission stated that currently, when a report is filed subject to a request for privileged treatment, any person desiring to see the report must file a formal request, pursuant to the Freedom of Information Act (FOIA) and § 385.1112 of the Commission's Rules of Practice and Procedure,[104] that the Commission make the report public. Due to the expense and delay caused by this additional step, in practice these requests have been infrequent. The Commission stated that allowing pricing information to be confidential undermines the Commission's goals of preventing undue discrimination and promoting price transparency, while a prohibition on the confidential treatment of § 284.126(b) reports would further all of these policy goals. The Commission noted concerns about the commercial sensitivity of the information to be reported, but found, based on the comments filed, that "a quarterly reporting requirement should allay any concerns regarding the commercial sensitivity of contract data."[105]

69. In addition to the policy considerations, the Commission found that its governing statutes support public treatment of data reported both by Hinshaw pipelines and by NGPA Section 311 pipelines. Accordingly, the NOPR proposed that the standardized reporting form include a statement that the report will be public.

2. Comments

70. TPA and some individual pipelines argue that the Commission must retain the traditional confidentiality process in Rule 1112 and § 388.112 of the Commission's regulations.[106] TPA argues that a policy of public disclosure would violate both Commission precedent and § 388.112, which call for case-by-case review of requests to release information.[107] ONEOK and TPA argue that complying with the proposed regulations could violate the confidentiality provisions of existing contracts.[108] Enstor and ONEOK suggest that many market-oriented shippers and large industrial end-users would seek to avoid Section 311 transactions in order to protect their trading positions.[109]

71. Enstor particularly urges the Commission to amend the proposed § 284.126(b)(1)(viii) requirement to report "Total revenues received for the shipper." Enstor argues that, when applied to "interruptible storage services (such as parking and lending)," this requirement would compel reporting of information "that is not currently disclosed by interstate natural gas companies."[110] Especially if unredacted, reporting individual shipper revenues "even on a quarterly basis" would do "catastrophic" damage to a pipeline's "business model, as well as to market liquidity."[111]

72. However Apache, Cities, Clayton Williams, Texas Alliance, and Yates expressly support public reporting, in order for the reports to serve the purported goal of benefitting market participants.[112] Clayton Williams cites the specific example of Texas's "grossly inadequate"[113] state-level data, which it claims is responsible for rampant discriminatory behavior in Texas markets.

3. Commission Determination

73. As we clarified in the preceding section, the revised reporting requirements adopted by this rule apply only to contracts for interstate service which are subject to our jurisdiction under the NGA in the case of Hinshaw pipelines or NGPA section 311 in the case of intrastate pipelines. While we regulate the interstate services of Hinshaw pipelines in a more light-handed manner than we regulate interstate pipelines, nevertheless the courts have made clear that such regulation of Hinshaw pipelines must comply with the basic requirements of the NGA, including sections 4 and 5 of the NGA.[114] In *SGRM,* the Commission pointed out that NGA section 4(c) requires that "under such rules and regulations as the Commission may prescribe, every natural gas company shall * * * keep open for public inspection * * * all rates * * * together with all contracts which in any manner affect or relate to such rates." The Commission concluded that:

> Although the NGA gives the Commission some discretion with respect to how to provide for the disclosure of rate schedules and contracts, clearly the public disclosure of rate schedules and related contracts, in some manner, is required.[115]

74. Accordingly, our requirement that the quarterly reports of Hinshaw pipelines concerning their jurisdictional contracts be posted without any information redacted is simply carrying out NGA section 4(c)'s requirement for public disclosure of rate and contract information "under such regulations and regulations as the Commission may prescribe." Furthermore, NGA section 23(a)(1) directs the Commission "to

[103] The Commission adopted a similar guideline in *Transparency Provisions of Section 23 of the Natural Gas Act,* Order No. 704, 73 FR 1014 (Jan. 4, 2008), FERC Stats. and Regs. ¶ 31,260 at P 114 (2007), *order on reh'g,* Order No. 704–A, 73 FR 55726 (Sept. 26, 2008), FERC Stats. & Regs. ¶ 31,275 (2008), *order on reh'g,* Order No. 704–B, 125 FERC ¶ 61,302 (2008).

[104] 18 CFR 385.1112.

[105] NOPR at P 31.

[106] *E.g.,* Enogex at 8.

[107] TPA at 18.

[108] TPA at 5, 16–17; ONEOK at 5.

[109] Enstor at 9; ONEOK at 5.

[110] Enstor at 6.

[111] Enstor at 7.

[112] *E.g.,* Apache at 10–11.

[113] Clayton Williams at 1.

[114] *Consumers Energy Co.* v. *FERC,* 226 F.3d 777 (6th Cir. 2000), holding that the Commission must comply with the requirements of NGA section 5 in order to require a Hinshaw pipeline to modify its rates for interstate service.

[115] *SGRM,* 125 FERC ¶ 61,191 at P 23, quoting Order No. 637–A, at 31,614.

facilitate price transparency in markets for the sale or transportation of physical natural gas in interstate commerce."[116]

75. While the NGPA does not contain an express public disclosure provision similar to NGA section 4(c), Section 311(c) of the NGPA authorizes the Commission to prescribe the "terms and conditions" under which intrastate pipelines perform interstate service. Requiring NGPA section 311 pipelines to publicly disclose transactional information for the purpose of allowing shippers and others to monitor NGPA Section 311 transactions for undue discrimination is well within the Commission's broad conditioning authority under Section 311(c).[117]

76. We reject TPA's argument that the Commission procedural rules in §§ 385.1112 and 388.112 require the Commission to allow pipelines to request confidential or privileged treatment of their transactional reports. The existence of those procedural rules does not prevent the Commission from establishing, in this rulemaking proceeding after notice and comment, a category of document, i.e., the Form 549D reports required by this rule, which must be made public in order for the Commission to carry out its statutory responsibilities under the NGA and the NGPA. Such automatic disclosure requirements already apply to various other reports filed with the Commission, including for example the FERC Form Nos. 2, 2–A, and 3–Q financial reports required by §§ 260.1, 260.2, and 260.300.[118]

77. As a matter of policy, we find that Hinshaw and section 311 pipelines must file their Form No. 549D reports as public in order to achieve the Final Rule's purpose of improving transparency, monitoring discrimination, and fostering efficient markets. The Commission recognizes the concern of some pipelines that disclosure of commercially sensitive information will enable a shipper to know what the pipeline is charging other shippers and thus prevent the pipeline from being able to negotiate the best price for the services it offers. In Order No. 637–A, the Commission exercised its discretion concerning the manner of public disclosure to delay interstate pipelines' posting of transactional information until the first nomination of service under the contract, rather than requiring posting upon execution of the contract. The Commission stated that this would temper any potential disadvantages from the public disclosure requirement, because the first nomination could be significantly after the contract was executed. In light of our more light-handed regulation of Hinshaw and section 311 pipelines and our desire to minimize undue burdens on such pipelines, we are permitting a longer delay between contract execution and disclosure by only requiring such reports to be filed quarterly. This should temper any potential adverse effects from disclosure.

78. However, public disclosure of all information in the quarterly reports is necessary to permit all market participants to monitor the market and detect undue discrimination. The Commission also expects and hopes that market participants will use the information from these reports in order to educate themselves about market conditions. Regardless of any adverse effect on individual entities, public disclosure will improve the market as a whole by improving efficiency and competition.

79. Finally, while ONEOK and TPA assert that the disclosure requirement could violate the confidentiality provisions of pipelines' existing contracts, most jurisdictional contracts include provisions that the contract is subject to all rules adopted by the Commission. Moreover, the Commission has previously held that such confidentiality provisions violate Commission policy. For example, in *Bay Gas Storage Co.,*[119] the Commission required a section 311 pipeline to remove from its Statement of Operating Conditions a provision that the terms of any storage or transportation service agreement must be kept confidential with certain exceptions, holding that the provision was "contrary to the Commission's favoring public disclosure of the provisions of service contracts under NGPA section 311." If any Hinshaw or section 311 pipeline believes that it is subject to a binding contractual obligation to keep confidential any information required to be disclosed by this rule, it must file that contract with the Commission so that it can be modified to remove any such provision.

G. Data Format and Technical Protocols

1. NOPR and Information Notice

80. The NOPR proposed that Commission Staff develop a mandatory, standardized electronic format for the Form No. 549D reports. The goals are to facilitate data submission, to provide the public timely and easy access to the information, and to avoid the costs of requiring intrastate pipelines to maintain a NAESB-compliant Web site.

81. The Commission introduced its proposed format in the Information Notice. The Information Notice provided a table showing proposed Form No. 549D data elements to be collected each quarter from each respondent. It also included an example of data entries reported by a sample pipeline for one shipper, a Proposed Form No. 549D Data Dictionary and Reporting Units, and draft Instructions for Reporting Data. The Commission also asked for comments on the technological issue of whether the proposed standardized format should be developed using XML or an ASP.NET Web-based form.

2. Comments

82. The discussion of information technology in the NOPR and Information Notice garnered widespread concern from pipelines. The chief concern of pipelines is that they may have to engage in extensive training or outsourcing in order to understand and comply with the Commission's directive.[120] AGA reports that "one company has estimated the cost of developing an in-house solution for XML Schema reporting to be approximately $30,000."[121] Jefferson reported its own estimate of $130,000 "to develop a quarterly report similar to the proposed Form No. 549D in the XML Schema format."[122] Jefferson also stated, however, that it could not support ASP.NET unless the Commission could first guarantee that the format would not "require[] a filer to manually enter data," or otherwise make the data submission and correction process laborious.[123]

83. In order to reduce this compliance burden, AGA along with Duke recommend that the Commission support not only the XML and ASP.NET approaches, but also "a simple spreadsheet with the data in tabular form that the intrastate and Hinshaw

[116] 15 U.S.C. 717t–2(a)(1). *See* Energy Policy Act of 2005, Public Law 109–58, § 316 ("Natural Gas Market Transparency Rules"), 119 Stat. 594 (2005).

[117] *See, e.g., AGD,* 824 F.2d at 1015–1018 (DC Cir. 1987) (affirming the Commission's use of Section 311(c) to require intrastate pipelines to permit their interstate sales customers to convert to transportation-only service).

[118] *See Quarterly Financial Reporting and Revisions to the Annual Reports,* Order No. 646, FERC Stats. & Regs. ¶ 31,158, Appendix B at 48 ("This report is also considered to be a non-confidential public use form."), *order on reh'g,* Order No. 646–A, FERC Stats. & Regs. ¶ 31,163 (2004); *accord* Instructions for Filing FERC Forms 2, 2–A, and 3–Q at I.

[119] 110 FERC ¶ 61,154 at P 17 (2005).

[120] *E.g.,* Jefferson at 9–11.

[121] AGA at 7.

[122] Jefferson at 14.

[123] Jefferson at 10.

pipelines could complete and file with the Commission using the eFiling portal." [124] TPA urges the Commission to not adopt a form at all, but rather allow pipelines to continue to file reports similar in format and content to what they file now.[125] In the alternative, TPA recommends making both XML and ASP.NET available.[126]

84. AGA also "recommends that the Commission develop a Frequently Asked Questions Web page or other Web-based Query System to assist intrastate and Hinshaw pipelines in complying with the new standardized electronic information filing requirements." [127] AGA, TPA, and Jefferson have several questions in this vein regarding specific elements and definitions from the Information Notice.[128]

85. Cities, along with Constellation, praise the Commission's decision "to shoulder the burden of Web site maintenance and standards compliance." [129] Yates, while generally supporting the Commission's proposal, argues that it would not be unduly burdensome to require pipelines to maintain their own Web sites on which they regularly publish transactional data.[130]

3. Commission Determination

86. The Commission will use XML to collect and process the data required by the Form No. 549D report and present it in a timely manner on its Web site. The Commission recognizes that some respondents may prefer not to use XML. Other respondents have experience with the format or for efficiency purposes would use XML. Therefore, the Commission will allow respondents at the beginning of each quarter to select the method [131] of filing most appropriate to their circumstances as described below:

a. Fillable-PDF Form No. 549D

For respondents who prefer not to use XML, the Commission will develop an electronic form in a PDF format that can be downloaded from the FERC Web site and saved to a user's computer desktop. The form can be viewed and updated using Adobe Acrobat Reader version 9 or higher. The fillable-PDF form will look like a standard document, so that a clerk or any other employee(s) will be able collaborate on filling it out, saving it, and submitting the fillable-PDF electronically to the Commission.[132] The data will be verified and validated before it will be officially accepted by the Commission. Each respondent's filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC Web site a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by filing a revised fillable PDF Form No. 549D with the Commission.[133]

b. File an XML file that validates against an XML Schema for Form No. 549D

This method of filing is for those respondents who have some experience with XML, or have a relatively large number of shippers and contracts to report on each quarter. The Commission would develop an XML Schema for Form No. 549D and make it available for download on the FERC Web site. Respondents would have to test and successfully validate their XML filing against the XML Schema for Form No. 549D prior to submitting it electronically to the Commission. Once the XML file is submitted, the Commission will examine it to ensure that it is formatted properly and validates against FERC's XML Schema for Form No. 549D before it is officially accepted by the Commission. Each respondent's filing would be publicly available in eLibrary within 1 day after filing. The public would also be able to download the entire Form No. 549D database for the quarter from the FERC Web site a few days after the filing deadline. Respondents would be able to correct any errors in their initial filings by resubmitting another XML file.

87. An updated data dictionary, paper copy of the Fillable PDF Form No. 549D, an example of the filled out Form No. 549D, and Instructions are attached as an appendix to this order. At a date closer to the deadline for filing the first Form No. 549D, the Commission will issue a notice for a Workshop in which Commission Staff will explain the overall filing process, including the fillable-PDF Form No. 549D, data dictionary, XML Schema and will answer any technical questions. Commission Staff are also directed to set up a form549D e-mail box (*form549d@ferc.gov*) where respondents can send questions. Commission staff will also provide online filing guidance and technical advice to respondents who request it, in line with the Commission's current guidelines for contact between Staff and regulated entities.

88. Finally, to the extent possible, the General Instructions for Form No. 549D developed by the Commission Staff will conform with the instructions for eTariff filing, so that pipelines shall use the same names to refer to the same objects and concepts in both their Statements of Operating Conditions and their quarterly reports. In this manner, the Commission hopes to address all of the above-noted concerns with regard to information technology for the Form No. 549D.

VI. Periodic Rate Review

A. Current Policy

89. Section 311 of the NGPA provides that the rates of intrastate pipelines performing transportation service under the NGPA shall be fair and equitable. Section 284.123 of the Commission's regulations implements this requirement for section 311 pipelines, and § 284.224(e)(i) provides that provides that Hinshaw pipelines performing interstate service will be subject to the same rate requirements that apply to intrastate pipelines under § 284.123. As a general matter, the Commission's review of the rates of both section 311 and Hinshaw pipelines is more light-handed than its review of the rates of interstate pipelines. For example, when intrastate and Hinshaw pipelines file a request for a rate change, the Commission does not impose the five-month suspension typically imposed on interstate pipeline rate increases, and it uses advisory, non-evidentiary proceedings to resolve the issues, rather than setting the case for an evidentiary hearing before an Administrative Law Judge, as it does for interstate pipeline rate cases.[134]

90. However, as part of this overall, more light-handed regulation of intrastate and Hinshaw pipelines, the Commission has established a policy of reviewing the rates of both types of pipelines every three years in order to ensure that the rates affecting interstate services remain fair and equitable.[135] The Commission has stated that the triennial rate review of section 311

[124] AGA at 14; *see also* Duke at 2–3, 7–9.

[125] TPA at 16.

[126] TPA at 20; *see also* ONEOK at 5.

[127] AGA at 3; *see also* AGA at 15.

[128] AGA at Appendix A; TPA at 20–25; Jefferson at 11–13.

[129] Cities at 4; *see also* Constellation at 4.

[130] Yates at 7.

[131] Respondents must choose only one methodology in a given quarter to file their quarterly report. They do not have to notify Commission staff of their selection.

[132] *See* Appendix for a paper copy of the Form No. 549D and an example of a completed copy.

[133] The Form No. 549D database accessible on the FERC Web site would only show the latest filing of each Respondent.

[134] *Gulf Terra Texas Pipeline, L.P.,* 109 FERC ¶ 61,350, at P 9 (2004) (*Gulf Terra*).

[135] *See, e.g., id.* at P 10 (citing *Arkansas Western Gas Company,* 56 FERC ¶ 61,407 (1991), *reh'g denied,* 58 FERC ¶ 61099 (1992)).

intrastate and Hinshaw pipelines enables the Commission to determine whether their rates have become unfair and unreasonable because the cost of service data upon which they are based have become stale.

91. The primary difference in the Commission's regulation of section 311 and Hinshaw pipelines is the procedural vehicle through which the three-year rate review of those pipelines' rates is performed. This difference arises from the difference in the statutes under which we regulate the two types of pipelines. For the reasons discussed in full in *Green Canyon Pipe Line Co.,*[136] the Commission has broad conditioning authority under NGPA section 311(c), which it has consistently exercised to require intrastate pipelines to file new petitions for rate approval every three years. However, the United States Court of Appeals for the District of Columbia Circuit has held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4.[137] Consistent with that finding, the Commission in *Consumers Energy Co.*[138] only required Hinshaw pipelines performing interstate service under a § 284.224 certificate to submit a triennial informational filing in the form specified in § 154.313 of the Commission's regulations for minor rate changes.

92. While the triennial rate review requirement is not part of the Commission's regulations, the Commission has consistently imposed that requirement as a condition of its approval of each rate filing by a section 311 or Hinshaw pipeline. The Commission has done this, whether the pipeline has chosen to elect a state-based rate pursuant to § 284.123(b)(1) or has proposed a rate for a Commission-approved rate pursuant to § 284.123(b)(2).[139]

B. Comments

93. While the NOPR did not directly raise the issue of whether the Commission should modify its triennial rate review policy, Duke points out in its comments that Order No. 636 removed the requirement that interstate pipelines file new rate cases every three years. It contends that, in order to treat section 311 pipelines and Hinshaw pipelines similarly: "the Commission should either reimpose a periodic rate filing requirement on interstate pipelines or eliminate the triennial filing requirement currently imposed on intrastate and Hinshaw pipelines."[140]

94. Other commenters argue that the triennial rate review requirement renders any additional information collection partly or wholly unnecessary. TPA predicts that the proposed reports "would not likely yield significant transparency benefits," because Section 311 pipelines already must file Statements of Operating Conditions with maximum rates and submit cost of service filings to the Commission and to state officials.[141] Enogex argues that the triennial rate review offers the Commission and other interested parties sufficient opportunity to review the rates and contracts of Section 311 pipelines. Enogex further argues that most interstate pipelines are not subject to rate reviews that are as detailed or frequent, and that Section 311 pipelines would be unduly burdened if further reporting were required.[142]

C. Commission Determination

95. As noted above, the Commission generally requires triennial rate reviews of section 311 intrastate and Hinshaw pipelines to ensure that the Commission has current information and rates have not become stale. Since these pipelines are not subject to the same reporting requirements, nor the same level of rate review, as interstate pipelines, the Commission can not eliminate periodic rate review without abrogating its duty to continually assure fair and equitable rates.

96. However, the Commission is sensitive to concerns that the improved reporting requirements could prove too burdensome, when considered in aggregation with other burdens such as triennial rate review. In recent years, the Commission has found it only occasionally necessary to impose rate reductions during these periodic reviews. It is our expectation that the improved reporting requirements will instill further market discipline, thus helping to continue this favorable trend. It thus appears that requiring all section 311 and Hinshaw pipelines to make filings for a review of their rates every three years imposes an unnecessary burden on both the pipelines and the Commission, as compared to the public benefits obtained by such rate review. Accordingly, the Commission has decided to modify its triennial rate review policy in order to decrease the frequency of review from three to five years. Therefore, the Commission intends in future orders approving rates filed by section 311 and Hinshaw pipelines to include a condition requiring a review of those rates five years from the date the approved rates took effect. Any pipelines subject to a requirement to file a triennial rate review after the issuance of this Final Rule may file a request for an extension of time consistent with the revised policy announced here.

VII. Effective Date of the Final Rule and Compliance Deadlines

A. Comments

97. Several commenters expressed concern over the speed with which the Commission would adopt and implement the proposed reporting requirements. Three suggestions raised by Jefferson and others were to hold conferences or otherwise delay the issuance of the Final Rule, delay the effective date of the Final Rule, and establish a safe harbor period.

98. First, Jefferson and others seek to delay the issuance of the Final Rule. Jefferson argues that the proposed format "[r]equires additional guidance in the form of industry conferences and workshops prior to the Commission's issuance of a Final Rule to avoid conflicts in interpretation of each proposed data element, develop a consensus regarding proposed technical reporting formats, and to give intrastate and Hinshaw pipelines an opportunity to present information that would more accurately represent the burden of reporting."[143] TPA, while also requesting a conference, urges the Commission to postpone any activity in this docket until after the Commission has completed the implementation and appeals process for the rulemaking in Order No. 720, which also concerns intrastate pipeline reporting, and assesses the impact of that rule before considering any further regulations.[144]

99. Second, Jefferson requests "an implementation period of at least 18 months from the issuance of a final rule * * * regardless of the technical format ultimately selected."[145] AGA also requests a delayed effective date, without specifying a length.[146]

100. Third, Jefferson requests a one year safe-harbor period, during which

[136] 98 FERC ¶ 61,041 at 61,122–3 (2002).

[137] *Public Service Commission of New York* v. *FERC,* 866 F.2d 487 (D.C. Cir. 1989).

[138] 94 FERC ¶ 61,287 (2001). *See also Gulf Terra* at P 12.

[139] *See Centana Intrastate Pipeline Co.,* 75 FERC ¶ 61,253 (1996) (Order on Rehearing) (imposing triennial rate review on a § 284.123(b)(1) filing); *Green Canyon Pipe Line Company, L.P.,* 98 FERC ¶ 61,041 (2002) (Order on Rehearing) (imposing triennial rate review on a § 284.123(b)(2) filing).

[140] Duke at 7.

[141] TPA at 3.

[142] Enogex at 10–11.

[143] Jefferson at 7.

[144] TPA at 6, 15; *see also* Atmos at 7; ONEOK at 3.

[145] Jefferson at 8.

[146] AGA at 16.

pipelines will not be penalized for inadvertent reporting errors.[147]

B. Commission Determination

101. The Final Rule will become effective on April 1, 2011. Pursuant to the regulations, the Form No. 549D quarterly report for the period January 1, 2011 through March 31, 2011 must be eFiled on or before May 1, 2011. Based on the comments from all shippers, we believe that this allows a sufficient period before implementation of the revised reporting requirement to allow reporting pipelines to familiarize themselves with the new reporting format and update their internal processes, if necessary. As noted above, Commission Staff plans to hold a technical workshop on a date to be announced in the near future for the purpose of assisting reporting pipelines in this transition.

102. We will not institute a safe-harbor period. However, as stated above in this order, because this is a new information collection, the Commission will focus any enforcement efforts on instances of intentional submission of false, incomplete, or misleading information to the Commission, of failure to report in the first instance, or of failure to exercise due diligence in compiling and reporting data.[148]

VIII. Information Collection Statement

A. Original Statement

103. In the NOPR, in accordance with the requirements of the Office of Management and Budget (OMB), the Commission estimated that on an annual basis the burden to comply with the rule as proposed would be as follows:

Data collection	Number of respondents	Number of responses	Hours per response	Total hours
Form No. 549D	125	4	3.5	1,750

Using an hourly rate of $150 to estimate the costs for filing and other administrative processes, the Commission estimated the total cost for all respondents to be $262,500.

B. Comments

104. Many pipelines strongly disagreed with the Commission's burden estimate. Most prominently, commenters urge the Commission to consider the initial implementation burden. Atmos states that it spent five months on the first annual report required by Order No. 704.[149] AGA estimates that the development of an XML Schema alone would cost $30,000 per respondent, for an initial total burden of $3.75 million.[150] Enogex estimates the "major information systems upgrades to allow Enogex to track, report, and maintain the level of detailed data necessary * * * [at] $3 to $4 million."[151]

105. Commenters also disagreed with the estimated ongoing annual burden. AGA estimated annual reporting would take over 12 hours per respondent to complete, which for 125 respondents would be an annual burden of $900,000.[152] TPA also believes that annual burdens will be significantly higher, especially if the Commission chooses a format that requires manual data entry.[153] "[D]ue to the large number of small-volume, interruptible 311 transactions * * * the burden of additional reporting might outweigh the benefits of participating," TPA warns.[154] Jefferson estimates 24 hours per quarter per respondent, with thousands of dollars in fees to third party information technology vendors.[155] In addition, Jefferson and others provide separate estimates of the cost of using industry common codes for shippers and receipt and delivery points, as detailed above in this order.[156]

C. Revised Statement

106. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency.[157] The Commission has submitted notification of these proposed information collection requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act of 1995.[158]

107. The requirement for intrastate pipelines to post additional information regarding their transactions would impose an initial burden on pipelines as they organize their corporate data to be compatible with the data elements selected by the Commission for Form No. 549D. Certain pipelines have asserted in comments that the costs could include the reconfiguring of information collection systems. However, given that this information is used in their business, the Commission still believes that the burden that would be imposed by this proposed requirement is largely for the collection of this information.[159] As stated above in this Final Rule, intrastate pipelines can choose to submit their quarterly Form No. 549D using a Commission-provided Fillable PDF form.[160] In this instance, intrastate pipelines would not be required to incur costs to learn XML or develop an XML Schema. Even if an intrastate pipeline chose to file an XML file, it would not incur costs to develop an XML Schema. The Schema would be developed by the Commission and provided to pipelines in order to validate their submission before eFiling it to the Commission. While the Commission erred in not including this burden in its original estimate, we nevertheless find that the burden estimates provided by commenters are far too high. These estimates were based on assumptions that the Commission would require a far more intensive volume of reports—transaction-by-transaction reports instead of contract-by-contract reports—and that the Commission would require the more technologically challenging XML data format without developing a "simple spreadsheet" form to guide respondents.

108. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. The Commission submitted notification of this rule to OMB. The Commission has developed a cost estimate of the initial implementation burden and revised the estimate of the ongoing annual burden concomitant with the decision allow multiple versions of the

[147] Jefferson at 8.

[148] *See, e.g.,* Order No. 704 at P 114.

[149] Atmos at 3.

[150] AGA at 7.

[151] Enogex at 7.

[152] AGA at 7.

[153] TPA at 15.

[154] TPA at 24.

[155] Jefferson at 14.

[156] *E.g.,* Jefferson at 9.

[157] 5 CFR 1320.11.

[158] 44 U.S.C. 3507(d).

[159] *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities (*e.g.,* in compiling and maintaining business records) will be excluded from the "burden" if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[160] Respondents would have to download the free version of Acrobat Reader version 9 to use the fillable PDF.

report. The analysis began with an examination of a representative sample of over one-third of the companies currently filing a Form No. 537, the semi-annual storage report, or Form No. 549, the annual transportation report. Studying the level and type of services performed for their shippers made it possible to split the industry between those that would logically file using the PDF form because of the relatively small number of shippers and services, and those that would incur the addition up-front effort associated with developing tools for filing the report using the Commission's XML schema. This analysis estimates that the 70 percent of Respondents that average less than five shippers transacting in a given quarter would file using the PDF form. The other 30 percent would incur addition development costs associated with the XML-based report to offset the larger on-going burden cost associated with reporting more shippers, services, and contracts. Cost estimates were developed for the initial burden and the on-going burden for each of the permissible file methods, using prevailing Houston labor costs and the most efficient hourly split of manpower by legal, accounting, regulatory and IT departments. The initial burden was split between effort involved in the initial review and planning procedures to ensure compliance with the rulemaking and the effort required to develop and implement the new procedures. The PDF startup effort would require an average 68 person-hours or $4,354 per Respondent. The XML startup effort would require an additional 128 person-hours, primarily associated with the increased IT development and testing requirements, for an estimated initial burden of $11,287 per Respondent. The start-up burden estimates for complying with this Final Rule are as follows:

INITIAL PUBLIC REPORTING BURDEN

Data collection filing method	Number of respondents	Average start-up burden per respondent	Total industry hours	Total industry costs
Using PDF Form	87	$4,354	5,916	$378,798
Using XML Schema	38	11,287	7,448	428,906
Total	125		13,364	807,704

To estimate ongoing burden, the Commission analyzed two sets of costs: The per-report cost for the effort by the legal accounting, IT and regulatory departments related to changes in the mix of shippers and services, and the per-contract costs related to the effort populate the report with the information associated with each shipper by service type and by contract. For the first set of costs, this analysis estimates the PDF form to require 11 person-hours at an estimated cost of $596 per report, and the XML Schema 10 man-hours at an estimated cost of $556 per report. For the per-contract set of costs, this analysis estimates the PDF form to require $663 per report and the XML Schema $543 per report, for the average Respondent.

ONGOING PUBLIC REPORTING BURDEN

Data collection filing method	Number of respondents	Average annual ongoing burden per respondent	Total industry hours per year	Total industry costs per year
Using PDF Form	87	$2,650	4,294	$230,550
Using XML Schema	38	2,171	1,520	82,498
Total	125		5,814	313,048

Title: Form No. 549D.

Action: Proposed Information Posting and Information Filing.

OMB Control No: xxxx-xxxx.

Respondents: Business or other for profit.

Frequency of Responses: Quarterly posting requirements.

Necessity of the Information: The quarterly filing of additional information by intrastate pipelines is necessary to provide information regarding the price and availability of natural gas transportation services to market participants, state commissions, the Commission, and the public. The filing would contribute to market transparency by empowering market participants to determine the extent to which particular transactions are comparable to one another; and it would allow the monitoring of potentially manipulative or unduly discriminatory activity.

Interested persons may obtain information on the reporting requirements by contacting the following:

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. [Attention: Data Clearance, Phone: (202) 502–8415, fax: (202) 273–0873] e-mail: *DataClearance@ferc.gov* or by contacting:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7345, fax: (202) 395–7285].

IX. Environmental Analysis

109. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[161] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[162] The actions taken here fall within categorical exclusions in the

[161] Order No. 486, *Regulations Implementing the National Environmental Policy Act of 1969,* 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[162] 18 CFR 380.4.

Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[163] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

X. Regulatory Flexibility Act

110. The Regulatory Flexibility Act of 1980 (RFA) [164] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analysis if proposed regulations would not have such an effect.

111. Most of the natural gas companies regulated by the Commission do not fall within the RFA's definition of a small entity.[165] Approximately 125 natural gas companies are potential respondents subject to the requirements adopted by this rule. For the year 2008 (the most recent year for which information is available), 4 companies had annual revenues of less than $7 million. This represents 3.2 percent of the total universe of potential respondents or only a very few entities that may have a significant burden imposed on them. In addition, by providing entities with an option of how they file the information, the Commission has provided alternatives, thereby lessening the economic impact for smaller entities while still accomplishing the regulatory objective of increasing market transparency. In view of these considerations, the Commission certifies that this Final Rule's amendments to the regulations will not have a significant impact on a substantial number of small entities.

XI. Document Availability

112. In addition to publishing the full text of this document, except for the Appendix, in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document, including the Appendix, via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

113. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document, including the Appendix, is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

114. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

XII. Effective Date and Congressional Notification

115. These regulations are effective April 1, 2011. The quarterly report for transactions occurring during the period January 1, 2011 through March 31, 2011 must be filed on or before May 1, 2011. The Commission has determined that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356

■ 2. In § 284.126, paragraph (b) is revised to read as follows:

§ 284.126 Reporting requirements.

* * * * *

(b) Form No. 549D, *Quarterly Transportation and Storage Report of Intrastate Natural Gas and Hinshaw Pipelines.*

(1) Each intrastate pipeline must use Form No. 549D to file a quarterly report with the Commission and the appropriate state regulatory agency that contains, for each transportation and storage service provided during the preceding calendar quarter under § 284.122, the following information on each transaction, aggregated by contract:

(i) The full legal name, and identification number, of the shipper receiving the service, including whether there is an affiliate relationship between the pipeline and the shipper;

(ii) The type of service performed (*i.e.,* firm or interruptible transportation, storage, or other service);

(iii) The rate charged under each contract, specifying the rate schedule/name of service and docket where the rates were approved. The report should separately state each rate component set forth in the contract (*i.e.,* reservation, usage, and any other charges);

(iv) The primary receipt and delivery points covered by the contract, identified by the list of points that the pipeline has published with the Commission, which shall include the industry common code for each point where one has already been established;

(v) The quantity of natural gas the shipper is entitled to transport, store, or deliver under each contract;

(vi) The duration of the contract, specifying the beginning and ending month and year of the current agreement;

(vii) Total volumes transported, stored, injected or withdrawn for the shipper; and

(viii) Total revenues received for the shipper. The report should separately state revenues received under each rate component;

(2) The quarterly Form No. 549D report for the period January 1 through March 31 must be filed on or before May 1. The quarterly report for the period April 1 through June 30 must be filed on or before August 1. The quarterly report for the period July 1 through September 30 must be filed on or before November 1. The quarterly report for the period October 1 through December 31 must be filed on or before February 1.

(3) Each Form No. 549D report must be filed as prescribed in § 385.2011 of this chapter as indicated in the General Instructions and Data Dictionary set out in the quarterly reporting form. Each report must be prepared and filed in conformance with the Commission's software or XML Schema, eTariff filing structure, and reporting guidance, so as

[163] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27).

[164] 5 U.S.C. 601–612.

[165] *See* 5 U.S.C. 601(3), citing section 3 of the Small Business Act, 15 U.S.C. 623. Section 3 of the SBA defines a "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. The Small Business Size Standards component of the North American Industry Classification System defines a small natural gas pipeline company as one that transports natural gas and whose annual receipts (total income plus cost of goods sold) did not exceed $7 million for the previous year.

to be posted and available for downloading from the FERC Web site (*http://www.ferc.gov*). One copy of the report must be retained by the respondent in its files.

(4) Intrastate pipelines filing Form No. 549D are no longer required to file Form No. 549—Intrastate Pipeline Annual Transportation Report after their March 31, 2011 filing.

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[FR Doc. 2010–12614 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 127

[Docket No. USCG–2007–27022]

RIN 1625–AB13

Revision of LNG and LHG Waterfront Facility General Requirements

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: In this final rule, the Coast Guard revises the requirements for waterfront facilities handling liquefied natural gas (LNG) and liquefied hazardous gas (LHG). The revisions bring the regulations up to date with industry practices and Coast Guard policy implemented due to increased emphasis on security since the events of September 11, 2001. These revisions harmonize the Coast Guard's regulations for LNG with those established by the Federal Energy Regulatory Commission (FERC), the agency with exclusive authority to approve or deny an application for the siting, construction, expansion, or operation of an LNG facility located onshore or within State waters. This rulemaking does not affect LNG deepwater ports.

DATES: This final rule is effective June 25, 2010. To the extent this rulemaking affects the collection of information in 33 CFR 127.007, we will not enforce the revised collection requirements until the collection is approved by the Office of Management and Budget (OMB). When OMB approves, we will publish notification in the **Federal Register**.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2007–27022 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2007–27022 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Commander Patrick Clark, CG–5222, U.S. Coast Guard; telephone 202–372–1410, e-mail *Patrick.W.Clark@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FERC Federal Energy Regulatory Commission
FR **Federal Register**
LHG Liquefied hazardous gas
LNG Liquefied natural gas
LOI Letter of Intent
LOR Letter of Recommendation
NEPA National Environmental Policy Act of 1969
NTTAA National Technology Transfer and Advancement Act
NPRM Notice of proposed rulemaking
NVIC Navigation and Vessel Inspection Circular
OMB Office of Management and Budget
U.S.C. United States Code
WSA Waterway Suitability Assessment

II. Regulatory History

On April 28, 2009, we published in the **Federal Register** a notice of proposed rulemaking entitled "Revision of LNG and LHG Waterfront Facility General Requirements" (74 FR 19159). We received four letters commenting on the proposed rule, containing a total of 38 comments. No public meeting was requested and none was held.

III. Background

A. Basis and Purpose of the Final Rule

Over the last decade, the worldwide production and transportation of liquefied natural gas (LNG) has increased substantially. Currently, the United States consumes about 25 percent of the world's annual natural gas production. Over the next 20 years, U.S. natural gas consumption is projected to increase. Should domestic gas production not meet this demand, increased marine LNG imports may be needed to help resolve this likely shortfall. Currently, there are nine waterfront LNG facilities in the United States: eight are import facilities, and one is an export facility. To meet rising demand, the energy industry has submitted dozens of proposals to build LNG import facilities along our coasts, and an unspecified number of proposals are in the early planning stages.

We have not seen, and do not expect, a similar increase in the production and transportation of liquefied hazardous gas (LHG). Although LNG and LHG facilities and the cargoes they handle are different in nature, we believe the vessels that transport these cargoes pose similar risks to the waterway environment and the area surrounding the marine transfer area of the facility when transfer operations are underway.

Safety and security of our ports and waterways have become paramount concerns since the events of September 11, 2001. Currently, the owner or operator intending to construct, modify, or reactivate an LNG or LHG facility must submit a Letter of Intent (LOI) to the Coast Guard. Information obtained in the LOI enables the Coast Guard to provide specific input, in a Letter of Recommendation (LOR), to an agency having jurisdiction for siting, construction, and operation. The LOR serves as the Coast Guard's recommendation to the jurisdictional agency as to the suitability of the waterway for LNG or LHG marine traffic on the waterway associated with the

proposed facility or modification to an existing facility.

In the case of LNG waterfront facilities regulated by FERC, the LOI has been augmented by a Waterway Suitability Assessment (WSA). The WSA is an applicant-prepared risk-based assessment designed to document and address all safety and security concerns related to the movement of LNG for a particular U.S. port or waterway. As discussed below, since 2005, FERC regulations have required prospective applicants for FERC authorization to site, construct, and operate LNG facilities to submit WSAs to the Coast Guard. The Coast Guard's Office of Operating and Environmental Standards (CG–5222) maintains guidance on preparation and submission of WSAs to the Coast Guard. Contact details are located under the section heading **FOR FURTHER INFORMATION CONTACT**.

In April 2009, the Coast Guard proposed a rule that would establish the WSA requirement in Coast Guard regulations, better aligning the regulations of the Coast Guard and FERC with regard to LNG. Although FERC generally does not regulate LHG facilities, the Coast Guard proposed to establish the WSA requirement for both LNG and LHG facilities because of the similarities between those cargoes.

B. Discussion of FERC Regulations With Regard to LNG

FERC regulates LNG import facilities located onshore or in State waters, but generally does not regulate facilities receiving marine deliveries of LHG. This section provides background information specific to FERC-regulated LNG facilities. The Coast Guard provided this information in the NPRM; we repeat it here for the convenience of the reader.

On October 18, 2005, FERC published a final rule in the **Federal Register** (70 FR 60426) implementing the Energy Policy Act of 2005 and creating procedures for the review of LNG terminals and other natural gas facilities. The FERC final rule amended 18 CFR parts 153 and 157 by requiring LNG facility owners and operators to submit WSAs to the Coast Guard as part of the FERC pre-filing process. Although FERC regulations, not Coast Guard regulations, require the WSA, the Coast Guard considers the applicant's WSA in developing its LOR.

FERC requires applicants seeking FERC's authorization to site, construct, and operate new LNG facilities, and some applicants seeking authority to make modifications to an existing or approved LNG facility, to make an initial filing to FERC and, concurrently, submit an LOI and a Preliminary WSA to the Coast Guard. After the submission of the initial filing, the Director of FERC's Office of Energy Projects (Director) determines whether the applicant may begin the pre-filing process. If the applicant meets the requirements to begin the pre-filing process, the Director will issue a notice that begins the pre-filing process.

During the pre-filing process, the applicant must satisfy several requirements, including the requirement in 18 CFR 157.21(f)(13) that an applicant "[c]ertify that a Follow-on WSA will be submitted to the U.S. Coast Guard no later than the filing of an application with the Commission (for LNG terminal facilities and modifications thereto, if appropriate). The applicant shall certify that the U.S. Coast Guard has indicated that a Follow-On WSA is not required, if appropriate."

The applicant must wait at least 180 days after the commencement of the FERC pre-filing process before starting the FERC filing process. Thus, the FERC regulations result in the LOI being submitted at least 180 days before the applicant files an application for authorization to construct the facility with FERC, even though the Coast Guard regulations for new and modified facilities only require the LOI to be submitted at least 60 days before construction begins.

IV. Discussion of Comments and Changes

The Coast Guard received letters from four commenters, containing a total of 38 comments on the NPRM. All comments received are available in the public docket for this rulemaking, where indicated under **ADDRESSES**. Below, we respond to all comments received, and describe changes made in response to specific comments.

A. General Comments

The Coast Guard received multiple comments expressing support for the proposed rule. In general, comments supported clarification of the existing regulatory regime for LNG and LHG marine transfer facilities. Specifically, the Coast Guard received one comment expressing general support for the proposed rule, one comment urging the Coast Guard to implement the proposed revisions of its regulations, one comment indicating the commenter "strongly supports" the Coast Guard's efforts to reconcile its regulations with FERC regulations, and one comment acknowledging the "importance of, and the Coast Guard's desire for, a coordinated, clearly-defined review process" resulting in a recommendation to the permitting authority. Additional supportive comments are discussed below. The Coast Guard appreciates these supportive comments.

Some commenters made reference to the role the LOI, WSA, and LOR may play in other agencies' environmental review of LNG or LHG projects. The Coast Guard understands that a permitting agency may use a variety of documents, including the LOI, WSA, or LOR, to aid in the development of its environmental analysis. These documents may contain environmental data: for example, § 127.007 requires the LOI to include charts identifying environmentally sensitive areas. Nonetheless, maritime safety and security concerns, rather than environmental review, are the primary drivers in creation of the LOI, WSA, and LOR, and the Coast Guard encourages Federal, State, and local agencies to view these documents in that context.

Finally, one commenter noted that the NPRM did not expressly state that the revised regulations would become effective on a prospective basis. For clarity, the Coast Guard confirms that the revised regulations will become effective upon the date indicated in the **DATES** section above.

B. Comments on the Letter of Intent

Two commenters made comments regarding § 127.007(a), which discusses LOIs.

First, one commenter noted slightly different language between §§ 127.007(a) and (e), in that the proposed § 127.007(a) required an LOI for construction expanding or modifying terminal (facility) operations, while § 127.007(e) required a WSA for any new construction. Although the Coast Guard did not intend any substantive difference in the wording of these two provisions, we agree that the differing language could result in confusion. The commenter recommended that § 127.007(e) read the same as § 127.007(a), to make this point clearer. The Coast Guard agrees that the two provisions should be consistent and has revised the proposed §§ 127.007(a) and (e) for clarity and consistency. The text of the final rule reflects this change.

Second, the same commenter recommended that § 127.007(a) be changed to trigger the LOI requirement when construction "would change the conditions reported in the last WSA" or, in the alternative, when the construction "also requires filing a permit request with the Federal Energy Regulatory Commission (FERC)." Although the Coast Guard finds these

recommendations too narrow, it concurs with the broader point that the LOI requirement is triggered when an applicant files with a permitting agency having jurisdiction. Section 127.007(a) applies to facilities not regulated by FERC—for example, LHG facilities—and facilities that do not yet have a WSA. For that reason, the Coast Guard declines to adopt the commenter's recommendations as written. As stated in the proposed regulatory text, however, the deadline for submitting the LOI is based on the owner or operator's decision to file with the permitting agency having jurisdiction. The Coast Guard does not require an LOI if the owner or operator does not file with a permitting agency having jurisdiction. In the unlikely event that no permitting agency has jurisdiction or no filing is required, the Coast Guard will not require an LOI or issue an LOR; however, the COTP retains his or her authority to ensure the maritime safety and security of the waterway.

The commenter noted that § 127.007 would require an LOI 1 year prior to the terminal (facility) improving its moorings by increasing hook or bollard capacity, modifying a gangway to improve access, or adding mooring monitoring systems. The Coast Guard concurs with this characterization if such expansion or modification of the marine transfer area of the facility requires the owner or operator to file with the permitting agency having jurisdiction over the facility and the expansion or modification results in an increase in the size and/or frequency of the LNG or LHG marine traffic on the waterway associated with the facility. Accordingly, the Coast Guard has modified the text of §§ 127.007(a) and (e) to specify that an LOI is required for construction, expansion, or modification that would increase the size and/or frequency of the LNG or LHG marine traffic on the waterway associated with the proposed facility or modification to an existing facility.

The commenter implied that it is undesirable to require an LOI 1 year prior to the type of improvements listed. However, such advance notice is necessary to the Coast Guard's maritime safety and security missions. If an owner or operator submits an LOI for a modification that does not require 1 year to review, the Coast Guard expects to issue the LOR within a shorter timeframe.

Separately, a different commenter stated that requiring an LOI 1 year prior to construction is not a FERC requirement and therefore "appears inconsistent with the goals of harmonizing" and aligning Coast Guard regulations with FERC regulations. Aligning Coast Guard regulations with FERC regulations is one goal of this rulemaking; the 1-year period between LOI and construction is designed to work with the FERC pre-filing process in which the LOI must be submitted at least 180 days before the applicant files its application for authorization to construct the facility with FERC. However, Coast Guard regulations must be broader and encompass more situations than FERC's regulations, in part because they apply to facilities FERC does not regulate. The Coast Guard requires the LOI at least 1 year prior to construction in order to allow adequate time for risk assessment.

Finally, to improve clarity, the Coast Guard added language to § 127.007(c)(2) specifying that the LOI must include the name, address, and telephone number of the Federal, State, or local agency having jurisdiction "for siting, construction, and operation."

C. Comments on Waterway Safety, and the Waterway Suitability Assessment

Two commenters commented on issues involving the WSA.

One commenter suggested § 127.007(g) be changed to require that WSAs contain a detailed analysis of the elements listed in §§ 127.007(f)(2) and 127.009(e) of this part. The commenter expressed concern that the proposed regulation required the Follow-on WSA to contain a detailed analysis of the elements the Coast Guard will consider in issuing the LOR but, as proposed, did not require a detailed analysis of the elements listed in the Preliminary WSA. The commenter correctly pointed out that this omission conflicted with our explanation of the proposed rule in the preamble to the NPRM, in which we indicated that the "Follow-on WSA would contain a detailed analysis of the topics in the Preliminary WSA, and a detailed analysis of any other safety or security impacts to the port and waterway identified by the Captain of the Port." The Coast Guard has modified the text of the final rule to include § 127.007(f)(2) as well as §§ 127.009(d) and (e).

A different commenter made general comments about the waterway suitability assessment process. This commenter said risk to the waterway must be adequately assessed, and that "leaving such an important review as voluntary" would be inadequate. The Coast Guard concurs that assessment of the waterway is vital. The owner or operator's WSA and the Coast Guard's review of that document are key elements of the risk management process. Coast Guard review ensures that the owner or operator has adequately assessed potential risks associated with vessel transit in the context of waterway safety and security as part of the Coast Guard's cooperation with the permitting agency. Because of the importance of this process, FERC regulations have made WSAs mandatory since 2005 for LNG facilities located onshore and in State waters. This rule will align Coast Guard regulations with existing FERC regulations for the mandatory assessment of the waterway, and will extend waterway suitability assessment measures to LHG facilities as well.

Additionally, the commenter sought "any data we can get from a Waterway Suitability Assessment" and, specifically, the "proponent's chart identifying what they consider environmentally sensitive." The Coast Guard strives to fully involve all port-level stakeholders in the Coast Guard's review of an applicant's WSA. When feasible, those stakeholders include those local and State entities with jurisdiction over a proposed facility. This rulemaking does not alter that process. Similarly, this rulemaking does not alter the availability of data submitted to the Coast Guard in the owner or operator's WSA.

D. Comments on Frequency of Shipments

One commenter submitted comments regarding the requirement that each LOI contain information on the frequency of LNG or LHG shipments to or from the facility. Specifically, the commenter described the requirement as "unprecedented in regulation" and "impossible to reliably assess." The commenter stated that the "frequency and number of vessels has no bearing on" waterway suitability, and recommended rewording § 127.007(c)(6) to exclude mention of the frequency of shipments. The Coast Guard disagrees with these comments and recommendation.

The requirement that the LOI contain "the frequency of LNG shipments to or from the facility" was present in the 1988 final rule that created § 127.007, and has remained in place since that date (53 FR 3370). When the requirement was extended to LHG in 1995, the preamble to that final rule, published in the **Federal Register** on August 3, 1995, stated that the "purpose of the 'Letter of Intent' is to give the [Captain of the Port] general notice of both the type and estimated number of LHG vessels that may call at the facility and the size of shipments. This information can easily be obtained from the facility-design specifications" (60 FR

39788). Every LOI provided by an owner or operator to the Coast Guard has included information on the frequency of shipments. With the exception of re-numbering the paragraph and re-ordering the terms "LNG" and "LHG," the NPRM did not propose changes to this requirement, and the Coast Guard intends no change to the current methods of compliance.

For all these reasons, the Coast Guard does not believe that the frequency of shipments is impossible to assess. As discussed in more detail below, the Coast Guard's mission of public stewardship requires that we consider activity in the waterway, and the impact of LNG and LHG vessel traffic, when evaluating waterway suitability. Therefore, the Coast Guard believes it necessary to include this information in the LOI.

E. Comments on Evaluating the Density and Character of Marine Traffic

One commenter submitted several comments on whether the Coast Guard should consider the density and character of marine traffic in a waterway when evaluating the suitability of the waterway for LNG or LHG vessel transit. Specifically, the commenter recommended deleting § 127.009(b) because the commenter feels that considering other marine traffic favors existing waterway uses to the detriment of new or expanding waterway uses not subject to a waterway suitability assessment requirement, and "puts the Coast Guard in a position of determining which waterway user should have usage rights and which should not."

Contrary to the commenter's statement that these are "Commerce issues beyond the intended purpose of the Coast Guard," the Coast Guard engages daily in managing the safe and secure movement of vessels, particularly vessels in interstate commerce, and in balancing the needs of many different waterway users. To clarify, however, the LOR does not "determine which waterway user should have usage rights"; rather, the LOR is the Coast Guard's recommendation to the jurisdictional agency as to the suitability of the waterway for LNG or LHG marine traffic.

The commenter notes that port management plans and safety and security zones are tools the Coast Guard uses to manage competing waterway priorities; other tools include notices of arrival and departure, regulated navigation areas, navigational "rules of the road," and COTP orders. To take the latter example, under the authority of the Ports and Waterway Safety Act or the Maritime Transportation Security Act of 2002, the Coast Guard COTP may order any vessel, whether a recreational craft or an LNG vessel, to make way for another when necessary for waterway safety and security. Such plans, zones, and orders take place pursuant to their own administrative processes, separate from the waterway suitability assessment or LOR. The LOR, by contrast, serves as the Coast Guard's recommendation to the agency having jurisdiction over siting, construction, and/or operation on whether the Coast Guard considers the waterway associated with a proposed facility or modification to an existing facility suitable for the LNG or LHG marine traffic. Additionally, the LOR often contains information helpful to the jurisdictional agencies for improving safety and security of the waterway for LNG or LHG marine traffic.

Input based solely on whether the vessel could physically transit the waterway would not serve the Coast Guard's missions or the needs of the agencies to which the LOR is issued, and would needlessly withhold the Coast Guard's expertise in waterway management. The Coast Guard's evaluation of waterway suitability necessarily includes evaluation of maritime safety and security risks posed by and to other vessels. Therefore, the Coast Guard declines the commenter's recommendation that we delete § 127.009(b).

F. Comments on the Letter of Recommendation

First, to improve clarity, the Coast Guard added language to § 127.009 specifying that the LOR is issued to the Federal, State, or local agency having jurisdiction "for siting, construction, and operation."

In addition, one commenter made comments regarding the LOR.

Specifically, the commenter urged the Coast Guard to "provide for contemporaneous notice" of the LOR to the owner or operator. The Coast Guard had intended that owners or operators receive a copy of the LOR, and we agree that the regulation should reflect that practice. Accordingly, the final rule specifies that the owner or operator will receive a copy of the LOR at the same time the Coast Guard sends the LOR to the government agency having jurisdiction for siting, construction, and operation.

The same commenter "believes that the applicant should have an opportunity to seek clarification or reconsideration of provisions contained in the LOR at the time of its issuance to other jurisdictional agencies." Recommendations expressed in the LOR represent the Coast Guard's professional input and are provided in the context of the Federal, State, or local jurisdictional agency's proceedings, which provide for participation and public comments. Therefore, additional information may be submitted by the owner or operator, the public, or the Coast Guard, to the Federal, State, or local agency with jurisdiction. To the extent the comment addresses a process for clarifying or reconsidering the recommendation contained in a particular LOR, such a process is outside the scope of this rulemaking. This rule aligns FERC and Coast Guard regulations with regard to the timing and content of submissions under 33 CFR 127.007, and clarifies the recipients of the LOR under § 127.009.

G. Comments on Timely Issuance of the Letter of Recommendation

One commenter recommended modifying § 127.009 to include a timeline for Coast Guard review of the WSA and issuance of the LOR. The Coast Guard shares the commenter's desire for timely review of LOIs and WSAs, and strives to issue LORs promptly. Current policy states that the COTP should issue the LOR before the permitting agency completes its environmental review. However, the Coast Guard does not intend to restrict the COTP in his or her review, especially given the possibility of changing circumstances, and does not intend to establish a right to a response in a specified time.

H. Comments on the Differences Between LNG and LHG

One commenter submitted comments on the differences between LNG and LHG. The commenter did not object to applying similar regulatory requirements to both LNG and LHG vessels, but asked the Coast Guard to "recognize and maintain the important factual distinctions between LNG and LHG." Specifically, the commenter urged that "regulatory requirements that may be appropriate to the regulation of LHG may not be appropriate or necessary for transfer operations concerning LNG."

The Coast Guard understands the commenter's concern. We recognize that the chemical properties of LNG differ from those of LHG, and that the risk of transporting these materials does vary. We also acknowledge, as we have done in the past, the well-documented safety record associated with LNG vessel transport. At this time, the Coast Guard finds no reason to apply different waterway suitability methodologies to these materials. However, the results of

a waterway suitability assessment are always specific to the commodity and waterway being evaluated.

I. Other Changes

33 CFR 127.005 defines a facility as "either a waterfront facility handling LHG or a waterfront facility handling LNG." These terms are clearly defined to mean any structure capable of being used to transfer LNG or LHG, in bulk, to or from a vessel. For consistency, and to avoid redundancy, the Coast Guard has modified the text of the final rule to use the term "facility" instead of "waterfront facility."

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

A. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, OMB has not reviewed it under that Order.

Public comments on the NPRM are summarized in Part IV of this publication. We received no public comments that would alter our assessment of the impacts discussed in the NPRM.

In this rule, the Coast Guard seeks to revise the requirements for waterfront facilities handling LNG or LHG. For LNG waterfront facilities, this rulemaking aligns the Coast Guard's submission deadlines with those of FERC. This rulemaking aligns the Coast Guard's submission deadlines for LHG waterfront facilities with those of LNG waterfront facilities. The Coast Guard believes it is necessary to require a WSA for both types of facilities and to provide consistency with FERC regulations regarding LNG facilities. This rule also provides consistency for other Coast Guard regulations that address both LNG and LHG facilities.

As noted above, the LOI and WSA are not new requirements for LNG facilities. Starting in 2005, FERC regulations required that LNG facility owners and or operators submit the LOI earlier than required by the Coast Guard regulations, and submit a Preliminary and Follow-on WSA to the Coast Guard. The procedure for the owner or operator to submit a WSA to the Coast Guard is not new for the LNG industry because LNG facility owners and operators have been submitting WSAs to the Coast Guard since 2005. As of December 2009, we have received 19 WSAs for LNG waterfront facilities with only one submittal since July 2008.

We expect that new waterfront LNG facilities that become operational in the future will not incur additional costs over and above existing waterfront LNG facilities as a result of this rule, because the LNG industry has been conducting WSAs as a common industry practice. We also expect existing LNG facilities to continue to operate according to industry standards and similarly to not incur additional regulatory costs. The rule eliminates industry confusion as the Coast Guard aligns its regulations with those of FERC.

As noted above, the submission of an LOI is not a new requirement for LHG facilities. However, the submission of a WSA for LHG facilities is a new requirement, but will apply only to new LHG facilities or existing facilities that seek to expand or modify operations that result in an increase in the size and/or frequency of LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility. Only one LHG facility has submitted a proposal to the Coast Guard to expand operations; this proposal currently is under review with regulatory authorities pursuant to existing regulations. In the future, the Coast Guard expects only one to two new or existing LHG facilities per year may become operational or may seek to expand or modify maritime operations.

Additionally, the Coast Guard contacted several industry representatives and obtained cost estimates for completing a WSA. The estimates varied greatly and are a function of the waterway environment and the geographic location and uniqueness of each facility. Cost estimates were between $80,000 and $1.2 million per WSA. We believe that these costs will have minimal effect on an LHG facility owner or operator's decision to expand operations.

Finally, this rule benefits the economy by ensuring the proposed waterway is suitable for the safe and secure navigation of LNG or LHG vessels and the transfer of these cargoes.

The collection of information burden associated with this rule is discussed in section V.D., below.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

In the NPRM, we certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities. We received no public comments that would alter our certification in the NPRM. We have found no additional data or information that would change our findings in the NPRM.

Large corporations own the nine existing waterfront LNG facilities and we expect this type of ownership to continue in the future. This type of ownership also exists for the approximately 159 LHG facilities operating in the United States. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This rule will call for the collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the

time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule modifies one existing OMB-approved collection, 1625–0049. The summary of the revised collection follows:

Title: Waterfront Facilities Handling Liquefied Natural Gas (LNG) and Liquefied Hazardous Gas (LHG).

OMB Control No.: 1625–0049.

Summary of the Collection of Information: The Coast Guard requires the submittal of a Letter of Intent (LOI) for LNG and LHG facilities that plan new construction or intend to expand existing operations to alert the Coast Guard of transfers of LNG or LHG, in bulk. In addition, a waterway suitability assessment will be required for a facility that intends new construction, expansion or modification of an existing facility, which results in an increase in the size and/or frequency of LNG or LHG marine traffic on the associated waterway.

Need for Information: The LOI is needed to alert the cognizant Coast Guard Captain of the Port (COTP) that a facility plans to conduct transfers of LNG or LHG, in bulk. It also provides a point of contact at the facility. Once the Coast Guard receives the letter, the COTP can direct the necessary enforcement activity to ensure that the operator complies with all of the requirements in 33 CFR part 127. The LOI also provides some of the information used by the COTP to determine the suitability of the waterway associated with a proposed facility or modification to an existing facility for LNG or LHG marine traffic. Changes to the information in the LOI are required to be submitted whenever they occur.

Use of Information: This information is required to ensure COTPs learn of the opening or reopening of a facility handling LNG or LHG far enough in advance to allocate resources and to plan enforcement strategies. COTPs will also have the information necessary to properly evaluate the suitability of a waterway for vessels carrying LNG or LHG.

Description of the Respondents: Respondents are the facilities themselves.

Number of Respondents: The existing OMB-approved number of respondents is 107. Based on our data, this rule will increase that number by 61 respondents to a total of 168 respondents.

Frequency of Response: The existing OMB-approved number of responses is 3,059 annually. This rule will increase that number by 1,936. The total number of responses will be 4,995.

Burden of Response: The existing OMB-approved burden of response is the same for the rule. We have maintained our estimates of the frequency of response for each item in the collection based on industry information, and we have added information regarding a WSA.

Estimate of Total Annual Burden: The existing OMB-approved total annual burden is 2,838 hours. This rule will increase that number by 6,666 hours, which includes 4,928 hours for the addition of a WSA to the collection of information, and 1,738 hours to account for a change in the number of respondents. The estimated total annual burden will be 9,504 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to OMB for its review of the collection of information. OMB has not yet completed its review of this collection. Therefore, the Coast Guard will not enforce the revisions this rule makes to information collection requirements at 33 CFR 127.007 until the collection is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any 1 year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

J. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. This rule involves regulations which are editorial or procedural, such as those updating addresses or establishing application procedures. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 127

Fire prevention, Harbors, Hazardous substances, Natural gas, Reporting and recordkeeping requirements, and Security measures.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 127 as follows:

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

■ 1. Revise the authority citation for Part 127 to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1.

§ 127.001 [Amended]

■ 2. Amend § 127.001:

■ A. In paragraph (c), by removing the words "Sections 127.007(c), (d), and (e)" and adding in their place the words "Sections 127.007(b), (c), and (d)".

■ B. In paragraph (e), by removing the words "Sections 127.007(c), (d), and (e)" and adding in their place the words "Sections 127.007(b), (c), and (d)".

■ 3. Revise § 127.007 to read as follows:

§ 127.007 Letter of intent and waterway suitability assessment.

(a) An owner or operator intending to build a new facility handling LNG or LHG, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must submit a Letter of Intent (LOI) to the Captain of the Port (COTP) of the zone in which the facility is or will be located. The LOI must meet the requirements in paragraph (c) of this section.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date that the owner or operator files a pre-filing request with the Federal Energy Regulatory Commission (FERC) under 18 CFR parts 153 and 157, but, in all cases, at least 1 year prior to the start of construction.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date that the owner or operator files with the Federal or State agency having jurisdiction, but, in all cases, at least 1 year prior to the start of construction.

(b) An owner or operator intending to reactivate an inactive existing facility must submit an LOI that meets paragraph (c) of this section to the COTP of the zone in which the facility is located.

(1) The owner or operator of an LNG facility must submit the LOI to the COTP no later than the date the owner or operator files a pre-filing request with FERC under 18 CFR parts 153 and 157, but, in all cases, at least 1 year prior to the start of LNG transfer operations.

(2) The owner or operator of an LHG facility must submit the LOI to the COTP no later than the date the owner or operator files with the Federal or State agency having jurisdiction, but, in all cases, at least 1 year prior to the start of LHG transfer operations.

(c) Each LOI must contain—

(1) The name, address, and telephone number of the owner and operator;

(2) The name, address, and telephone number of the Federal, State, or local agency having jurisdiction for siting, construction, and operation;

(3) The name, address, and telephone number of the facility;

(4) The physical location of the facility;

(5) A description of the facility;

(6) The LNG or LHG vessels' characteristics and the frequency of LNG or LHG shipments to or from the facility; and

(7) Charts showing waterway channels and identifying commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG or LHG vessels en route to the facility, within at least 25 kilometers (15.5 miles) of the facility.

(d) The owner or operator who submits an LOI under paragraphs (a) or (b) of this section must notify the COTP in writing within 15 days of any of the following:

(1) There is any change in the information submitted under paragraphs (c)(1) through (c)(7) of this section; or

(2) No LNG or LHG transfer operations are scheduled within the next 12 months.

(e) An owner or operator intending to build a new LNG or LHG facility, or an owner or operator planning new construction to expand or modify marine terminal operations in an existing facility handling LNG or LHG, where the construction, expansion, or modification would result in an increase in the size and/or frequency of LNG or LHG marine traffic on the waterway associated with a proposed facility or modification to an existing facility, must file or update as appropriate a waterway suitability assessment (WSA) with the COTP of the zone in which the facility is or will be located. The WSA must consist of a Preliminary WSA and a Follow-on WSA. A COTP may request additional information during review of the Preliminary WSA or Follow-on WSA.

(f) The Preliminary WSA must—

(1) Be submitted to the COTP with the LOI; and

(2) Provide an initial explanation of the following—

(i) Port characterization;

(ii) Characterization of the LNG or LHG facility and LNG or LHG tanker route;

(iii) Risk assessment for maritime safety and security;

(iv) Risk management strategies; and

(v) Resource needs for maritime safety, security, and response.

(g) The Follow-on WSA must—

(1) Be submitted to the COTP as follows:

(i) The owner or operator of an LNG facility must submit the Follow-on WSA to the COTP no later than the date the owner or operator files its application with FERC pursuant to 18 CFR parts 153 or 157, or if no application to FERC is required, at least 180 days before the owner or operator begins transferring LNG.

(ii) The owner or operator of an LHG facility must submit the Follow-on WSA to the COTP in all cases at least 180 days before the owner or operator begins transferring LHG.

(2) Contain a detailed analysis of the elements listed in §§ 127.007(f)(2), 127.009(d), and 127.009(e) of this part.

(h) Until the facility begins operation, owners or operators must:

(1) Annually review their WSAs and submit a report to the COTP as to whether changes are required. The deadline for the required annual report should coincide with the date of the COTP's Letter of Recommendation, which indicates review and validation of the Follow-on WSA has been completed.

(2) In the event that revisions to the WSA are needed, report to the COTP the details of the necessary revisions, along with a timeline for completion.

(3) Update the WSA if there are any changes in conditions, such as changes to the port environment, the LNG or LHG facility, or the tanker route, that would affect the suitability of the waterway for LNG or LHG traffic.

(4) Submit a final report to the COTP at least 30 days, but not more than 60 days, prior to the start of operations.

■ 4. Revise § 127.009 to read as follows:

§ 127.009 Letter of recommendation.

After the COTP receives the Letter of Intent under § 127.007(a) or (b), the COTP issues a Letter of Recommendation as to the suitability of the waterway for LNG or LHG marine traffic to the Federal, State, or local government agencies having jurisdiction for siting, construction, and operation, and, at the same time, sends a copy to the owner or operator, based on the—

(a) Information submitted under § 127.007;

(b) Density and character of marine traffic in the waterway;

(c) Locks, bridges, or other man-made obstructions in the waterway;

(d) Factors adjacent to the facility such as—

(1) Depths of the water;

(2) Tidal range;

(3) Protection from high seas;

(4) Natural hazards, including reefs, rocks, and sandbars;

(5) Underwater pipelines and cables;

(6) Distance of berthed vessel from the channel and the width of the channel; and

(e) Other safety and security issues identified.

F. J. Sturm,

Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2010–12680 Filed 5–25–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1132]

RIN 1625–AA00

Safety Zone; AVI May Fireworks Display, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. to 9:45 p.m. on May 30, 2010.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–1132 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–1132 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 2, 2010 we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; AVI May Fireworks Display; Laughlin, Nevada, NV in the **Federal Register** (75 FR 9370). We received 0 comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Basis and Purpose

The AVI Resort and Casino is sponsoring the AVI May fireworks display, which is to be held at the AVI Resort and Casino on the Lower Colorado River in Laughlin, Nevada. A temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Comments and Changes

There were no comments submitted and no changes were made to the regulation.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of the AVI May fireworks display adjacent to the AVI Resort and Casino on the Lower Colorado River, Laughlin, NV. The safety zone will be effective from 8 p.m. to 9:45 a.m. on May 30, 2010. The safety zone is set as an 800 foot radius around the firing site in approximate position: 35°00.45′ N, 114°38.18′ W.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This determination is based on the size and location of the safety zone. While vessels will not be allowed to transit through the designated safety

zone during the specified times, the zone exists for only a short period of time and will be enforced only during a period where vessel traffic is light.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8 p.m. to 9:45 p.m. on May 30, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in effect for one hour and 45 minutes late in the evening when vessel traffic is low. Before the effective period, we will publish a Local Notice to Mariners (LNM).

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping

requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–284 to read as follows:

§ 165.T11–284; Safety Zone; AVI May Fireworks Display, Laughlin, Nevada, NV.

(a) *Location.* The limits of the proposed safety zone are as follows: will include all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″ N, 114°38′28″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on May 30, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: May 8, 2010.

T. H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–12697 Filed 5–25–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2009–0668; FRL–8819–3]

RIN 2070–AB27

Revocation of Significant New Use Rule on a Certain Chemical Substance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to 40 CFR 721.185, EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified generically as polyalkyl phosphate, which was covered by premanufacture notice (PMN) P–95–1772. Based on the concern criteria in § 721.170(b), EPA issued a non-5(e) SNUR (i.e., a SNUR on a substance that is not subject to a TSCA section 5(e) consent order) designating certain activities as significant new uses. Subsequently, EPA received and reviewed new information and test data for the chemical substance. Based on the new information and test data, the Agency no longer finds that the activities not described in PMN P–95–1772 constitute significant new uses.

DATES: This final rule is effective July 26, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2009–0668. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact*: Tracey Klosterman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–2209; e-mail address: *klosterman.tracey@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substance contained in this revocation. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, or processors of the subject chemical substance (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in § 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

The Agency proposed revocation of this SNUR in the **Federal Register** of December 31, 2009 (74 FR 69320) (FRL–8796–6). The comment period for the proposed rule closed on February 1, 2010; EPA received no comments on the action.

Based on the results of submitted biodegradation testing, EPA has determined that the substance is readily biodegradable, mitigating concerns for chronic toxicity to aquatic organisms. Therefore, EPA no longer finds that releases to water resulting in stream concentrations that exceed 1 parts per billion (ppb) may cause significant adverse environmental effects. Based on available information, the substance no longer meets the concern criteria at § 721.170(b)(4)(ii). Therefore, EPA is revoking the SNUR for this chemical substance pursuant to § 721.185(a)(4).

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under § 721.5.

Upon conclusion of the review for PMN P–95–1772, based on the concern criteria in § 721.170(b)(4)(ii), EPA determined that there was a concern for potential environmental effects of the substance and promulgated a non-5(e) SNUR for this chemical substance.

Under § 721.185, EPA may at any time revoke a SNUR for a chemical substance which has been added to subpart E of 40 CFR part 721, if EPA makes one of the determinations set forth in § 721.185(a)(1) through (a)(6). Revocation may occur on EPA's initiative or in response to a written request. EPA has determined that the criteria set forth in § 721.185(a)(4) have been satisfied for the chemical substance. Therefore, EPA is hereby revoking the SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of intent to manufacture, import, or process this substance for any significant new uses. In addition, export notification under section 12(b) of TSCA triggered by this SNUR will no longer be required.

III. Statutory and Executive Order Reviews

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Agency has determined that this SNUR revocation will not have any adverse impacts, economic or otherwise.

The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This rule does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), (44 U.S.C. 3501 *et seq.*). Since this rule eliminates a reporting requirement, the Agency hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), that this SNUR revocation will not have a significant economic impact on a substantial number of small entities.

For the same reasons, this action does not require any action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This rule has neither Federalism implications, because it will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), nor tribal implications, because it will not have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000).

This action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address environmental health or safety risks disproportionately affecting children. It is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use. Because this action does not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), does not apply to this action. This action does not involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 19, 2010.

Barbara A. Cunningham,

Acting Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. The table in § 9.1 is amended by removing under the undesignated center heading "Significant New Uses of Chemical Substances" § 721.5995.

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.5995 [Removed]

■ 4. Remove § 721.5995.

[FR Doc. 2010–12596 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2008–0763; FRL–8826–9]

Coat Protein of Plum Pox Virus; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the coat protein of plum pox virus in or on stone fruit and almond when expressed in these food commodities by the plant-incorporated protectant, coat protein gene of plum pox virus. Interregional Research Project Number 4 of Rutgers University (on behalf of the United States Department of Agriculture-Agricultural Research Service-Appalachian Fruit Research Station) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of the coat protein of plum pox virus under the FFDCA.

DATES: This regulation is effective May 26, 2010. Objections and requests for hearings must be received on or before July 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0763. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 174 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0763 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 26, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2008–0763, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of November 14, 2008 (73 FR 67512) (FRL–8388–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a

pesticide tolerance petition (PP 7E7231) by Interregional Research Project Number 4 (IR-4), Rutgers University, 500 College Rd. East, Suite 201 W., Princeton, NJ 08540 (on behalf of the United States Department of Agriculture-Agricultural Research Service-Appalachian Fruit Research Station (USDA-ARS-AFRS), 2217 Wiltshire Rd., Kearneysville, WV 25430). The petition requested that 40 CFR part 174 be amended by establishing an exemption from the requirement of a tolerance for residues of the coat protein of plum pox virus. This notice referenced a summary of the petition prepared by the petitioner, IR-4 (on behalf of USDA-ARS-AFRS), which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is "safe." Section 408(c)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.... " Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider "available information concerning the cumulative effects of [a particular pesticide's] residues and other substances that have a common mechanism of toxicity."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

A. Overview

The coat protein of plum pox virus is produced by a plant-infecting Potyvirus in *Prunus* species, which include plum (cultivated and native or wild species), peaches, almonds, nectarines, and cherries. Such stone fruits are a natural source and sink for plum pox virus. When the gene that is responsible for producing the coat protein in infected plants is genetically engineered into uninfected plum trees, the plants become resistant to the devastating disease this virus causes, which is known as "Plum Pox." The C5 HoneySweet Plum (C5 plum) tree has been genetically engineered to contain the gene responsible for the coat protein. Ribonucleic acid (RNA) fragments derived from the virus coat protein gene cause the plant's natural protection mechanism, post-transcriptional gene silencing (PTGS), to be primed to resist virus infection, should it occur. Although non-engineered plants initiate PTGS upon infection with the virus, the serious damage caused by the virus (such as fruit degradation and leaf chlorosis) is not prevented.

The exemption from the requirement of a tolerance for residues of nucleic acids that are part of a plant-incorporated protectant established under 40 CFR 174.507 covers the coat protein gene (sometimes called the "transgene") of plum pox virus. The reason for establishing an exemption from the requirement of a tolerance for residues of the coat *protein* of plum pox virus (as opposed to the coat protein *gene*) is that insertion of the gene into the C5 plum includes an open reading frame, and so the production of this protein, and thus residues of the protein in or on food, is theoretically possible. In the unlikely event that any protein is produced, dietary exposure could result. However, no virus coat protein has been detected in the C5 plum during years of extensive field trials, which is likely attributed to the early initiation of the PTGS protective mechanism in the C5 plum plants (Ref. 1). That is, while the coat protein of plum pox virus is produced in non-transgenic *Prunus* species infected with plum pox virus, it has not been observed (but is theoretically possible) in the transgenic plums.

B. Mammalian Toxicity and Allergenicity Assessment

To determine whether the coat protein of plum pox virus could potentially cause toxicity or allergenicity, the petitioner submitted results of an amino acid sequence similarity study. This study used two methods to compare the deduced amino acid sequence of the plum pox virus coat protein (as it could potentially be produced in the C5 plum) with sequence databases of known food allergens, toxins, and antinutrients. In the first analysis for overall similarity to toxins, allergens and anti-nutrients, none of the sequence analyses produced alignments greater than 35% identity over a window of 80 amino acids. In the second analysis specifically for allergen epitopes (regions of potential binding for triggering allergic reactions), there were no matching regions of eight amino acids, which is considered the threshold needed to indicate a potential hazard. These studies follow the guidance of the Codex Alimentarius for the safety assessment of foods derived from biotechnology (Ref. 2). Therefore, these data demonstrated that no food allergenicity, toxicity, or antinutrient effects would be expected from dietary exposure to the transgene, the overlapping plum DNA, or the protein (if it were produced) in the C5 plum.

C. In vitro Digestibility

Based upon the results of the submitted amino acid sequence similarity studies discussed in Unit III.B., the fact that plum pox virus coat protein has been in the human diet without adverse effects, and the reasonable expectation that no plum pox coat protein will be expressed in the C5 plum, the Agency granted the petitioner's waiver request for an *in vitro* digestibility study.

D. Hypersensitivity

The petitioner reported that since research began with the C5 plum in 1992, approximately 80 trees have been tested. Neither Agricultural Research Service (ARS) production staff, numbering approximately 20 people in the United States (West Virginia), nor personnel performing testing in Spain, Poland, Romania, the Czech Republic, and Chile, have, to the knowledge of EPA, experienced hypersensitivity or other adverse effects. Therefore, no

hypersensitivity effects are expected from exposure to the coat protein of plum pox virus (if it were produced) in the C5 plum. The Agency expects to be notified if such a hypersensitivity incident were to occur.

E. Additional Information

The petitioner submitted scientifically based rationales, described in Unit. III.E., to justify the requested waivers of the following microbial pesticide toxicology data requirements: Tier I - acute oral toxicity/pathogenicity (Harmonized Test Guideline 885.3050), acute dermal toxicity/pathogenicity (Harmonized Test Guideline 885.3100), acute pulmonary toxicity/pathogenicity (Harmonized Test Guideline 885.3150), and acute injection toxicity/ pathogenicity (Harmonized Test Guideline 885.3200). The Agency uses the microbial pesticide data requirements (see 40 CFR 158.2130) because the C5 plum has virus sequences similar to microbial products based on plant viruses. Basing the decision to grant the requested waiver of the data requirements on the available data and information without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity testing and the requirement of residue data for microbial products based on plant viruses from which this plant-incorporated protectant was derived (see 40 CFR 158.2130). For microbial products, further toxicity testing and residue data are triggered by significant adverse acute effects in studies such as the mouse oral toxicity study, to verify the observed adverse effects and clarify the source of these effects (Tiers II & III).

Several pertinent issues were considered by the Agency concerning the potential for dietary hazards from the C5 plum before determining whether to grant the petitioner's waiver requests. When considering registrations for plant-incorporated protectants to be used in food commodities, the potential for dietary exposure to novel proteins that may possess toxic, allergenic, or antinutrient properties must be evaluated. Sufficient information demonstrating that plant viruses are both in the human diet and exist in the human intestine without negative effects was reviewed by the Agency. Since Potyviruses contain other proteins in addition to coat protein and are not the only plant viruses found in food commodities, humans can be exposed to a wide range of plant virus proteins (Ref. 3). Proteins of plant viruses, including the coat protein from plum pox virus, neither act as antinutrients when ingested, nor possess any properties that lead to toxicity or allergenicity (Ref. 4). Therefore, based on the lack of hazard from existing dietary exposure to plant viruses and the low expected potential for expression of the plum pox coat protein, there is a reasonable certainty of no harm from the aggregate exposure to the residues of the coat protein of plum pox virus, should it be expressed.

Another consideration is the product of the coat protein gene of plum pox virus as inserted into the C5 plum. In the natural virus infection, its replication intermediates do not require DNA since a virus-encoded, RNA-Dependent RNA-polymerase is used. To express the gene in a plant, a DNA copy must be made and incorporated into the plant's genome, so that the plant will express messenger ribonucleic acid (mRNA) homologous to the virus coat protein only. Often for a Potyvirus, this means also adding a start codon and short leader sequence since the viral start codon is distant from the coat protein sequence in the normal viral RNA genome (Ref. 4). As discussed in Unit III.B., a full sequence analysis and comparison with known toxins, allergens, and antinutrients demonstrated that neither the coat protein gene nor the plum pox coat protein gene inserted into the C5 plum were sufficiently homologous to trigger an adverse reaction.

Consideration of the low potential for production of protein is important since the silenced inserted gene has an open reading frame. Although there are known instances where suppression of gene-silencing can occur (e.g., PTGS inhibition such as produced by some other plant viruses, and low temperature growth), there are no foreseeable events that would lead to a breakdown in resistance under field conditions for the C5 plum. PTGS virtually eliminates the possibility of translation of virus coat protein from viral mRNA. When the coat protein gene insert is transcribed to the mRNA for the coat protein of plum pox virus, the mRNA is quickly cleaved and thus cannot be translated into the protein. If the plant becomes infected with the virus, the PTGS mechanism rapidly degrades the mRNA from the virus and prevents the production of new virions within the plant's tissues (Ref. 1).

In light of these considerations, the Agency granted the petitioner's requests to waive the listed data requirements.

F. References

1. Ravelonandro, M., J. Kundu, P. Briard, M. Monison and R. Scorza. 2007. The Effect of Co-Existing *Prunus* Viruses on Transgenic Plum Pox Virus Resistant Plums. ISHS Acta Horticulturae 738: International Symposium on Biotechnology of Temperate Fruit Crops and Tropical Species, pp. 653–656.

2. Codex Alimentarius (2003) Foods Derived from Biotechnology, United Nations, Food and Agriculture Organization, World Health Organization.

3. Zhang, T., M. Breitbart, W. H. Lee, J.-Q. Run, C. L. Wei, S. W. L. Soh, M. L. Hibberd, E. T. Liu, F. Rohwer, Y. Ruan. 2006. RNA Viral Community in Human Feces: Prevalence of Plant Pathogenic Viruses. PLOS Biology 4(1):108-118.

4. Shukla, D. D., C. W. Ward. A. A. Brunt. 1994. The Potyviridae. CAB International. University Press. Cambridge, UK.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption for residues of the coat protein of plum pox virus, all other exemptions in effect for residues of virus coat proteins and virus coat protein gene plant-incorporated protectants, and exposure from non-occupational sources. Exposure to the coat protein of plum pox virus via the inhalation or dermal routes is not likely, since PTGS virtually eliminates the possibility of translation of the coat protein of plum pox virus from viral mRNA. In the event the protein is expressed in the C5 plum, it would be contained within plant cells, either eliminating the possibility of dermal and inhalation exposure, or reducing those exposure routes to negligible levels. This same evidence supports the Agency's conclusion that oral exposure from drinking water would be highly unlikely. Even if exposure occurred through an unlikely route, such as inhalation, the potential for the coat protein of plum pox virus to be an allergen is low, as evidenced by the lack of sequence homology with known allergens and the lack of hypersensitivity incidents in

individuals handing C5 plum trees, fruits, and other plant tissues during 18 years of research. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the coat protein gene of plum pox virus are agricultural. In the unlikely event that the C5 plum expresses any viral coat protein, oral exposure from ingestion of fresh or processed fruit could occur, but as discussed in Unit. III.E., the protein would not be expected to cause any adverse reactions.

V. Cumulative Effects from Substances with a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found the coat protein of plum pox virus to share a common mechanism of toxicity with any other substances, and the coat protein of plum pox virus does not appear to produce a toxic metabolite. For the purposes of this tolerance exemption action, therefore, EPA has assumed that the coat protein of plum pox virus does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Determination of Safety for U.S. Population, Infants and Children

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

Based on its review and consideration of all of the data and other information submitted by the petitioner discussed in Unit III., in addition to its previous knowledge of plant viruses and plant virus coat proteins discussed in Unit III.E., EPA concludes that there is a reasonable certainty that no harm will result to the United States population, including infants and children, from aggregate exposure to residues of the coat protein of plum pox virus. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion because the data available on the coat protein of plum pox virus demonstrate a lack of toxicity and pathogenicity. Plum pox Potyvirus (including the coat protein of plum pox virus) is not known to produce any recognized toxins, novel proteins, antinutrients, virulence factors, or enzymes normally associated with pathogen invasiveness or toxicity in mammals. Thus, there are no threshold effects of concern and, as a result, the Agency has concluded that the additional tenfold margin of safety for infants and children is unnecessary in this instance.

VII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for the coat protein of plum pox virus.

VIII. Conclusions

The Agency concludes that there is a reasonable certainty that no harm will result to the United States population, including infants and children, from aggregate exposure to residues of the coat protein of plum pox virus. Therefore, an exemption is established for residues of the coat protein of plum pox virus in or on the food commodities of fruit, stone, Group 12; and almond.

IX. Statutory and Executive Order Reviews

This final rule establishes a tolerance exemption under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination*

with Indian Tribal Governments (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 7, 2010.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 174.531 is added to subpart W to read as follows:

§174.531 Coat protein of plum pox virus; exemption from the requirement of a tolerance.

Residues of the coat protein of plum pox virus in or on the food commodities of fruit, stone, Group 12; and almond, are exempt from the requirement of a tolerance in these food commodities when expressed by the plant-incorporated protectant, coat protein gene of plum pox virus, and used in accordance with good agricultural practices.

[FR Doc. 2010–12579 Filed 5–25–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0920; FRL–8827–7]

Diquat Dibromide; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of diquat, derived from applications of diquat dibromide, in or on canola meal and canola seed. Syngenta Crop Protection, Inc. requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA). This regulation also corrects minor errors in the regulations for diquat at 40 CFR 180.266.

DATES: This regulation is effective May 26, 2010. Objections and requests for hearings must be received on or before July 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0920. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

C. How Can I File an Objection or Hearing Request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0920 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or

before July 26, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0920, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 4, 2010 (75 FR 5793) (FRL–8807–5), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7639) by Syngenta Crop Protection, Inc., P.O Box 18300, Greensboro, NC 27419. The petition requested that 40 CFR 180.226 be amended by establishing tolerances for residues of the herbicide diquat, 6,7-dihydrodipyrido(1,2-a:2'1'-c)pyrazinediium, derived from application of the dibromide salt and calculated as the cation, in or on canola, meal at 3.0 parts per million (ppm); and canola, seed at 1.0 ppm. That notice referenced a summary of the petition prepared by Sygenta Crop Protection, Inc., the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has increased the tolerance levels for canola, meal and canola, seed to 6.0 ppm and 2.0 ppm, respectively. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for diquat dibromide including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with diquat dibromide follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Diquat dibromide exhibits low acute toxicity via the oral and inhalation routes of exposure but is moderately to severely toxic via the dermal route of exposure. Diquat dibromide is not a skin irritant nor a dermal sensitizer, but it is considered a moderate to severe eye irritant.

Subchronic and chronic studies in several species indicate multiple target sites for diquat dibromide toxicity. In subchronic dermal exposure studies in rats, diquat dibromide showed evidence of severe systemic toxicity, including high mortality and clinical signs. In a subchronic inhalation study in rats, the lung was determined to be the primary target site for inhalation toxicity. Chronic feeding studies in dogs, rats, mice, and rabbits indicate that target sites include the eyes and kidneys in both males and females and the adrenals and epididymides in males. There was no evidence of neurotoxicity in acute and subchronic studies in rats and no evidence of endocrine disruption or immunotoxicity in the toxicology studies available for diquat dibromide. In accordance with the 1986 Guidelines for Carcinogen Risk Assessment, diquat dibromide was classified in Group E (evidence of non-carcinogenicity to humans), based on a lack of evidence of carcinogenicity in acceptable studies in rats and mice and a lack of concern for mutagenicity.

There was no evidence of increased quantitative or qualitative susceptibility of *in utero* animals or of offspring in developmental toxicity studies in mice, rabbits, and rats or in the 2–generation reproduction study in rats. Effects in the offspring were observed only at or above dose levels which resulted in parental toxicity.

Specific information on the studies received and the nature of the adverse effects caused by diquat dibromide as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document "*Diquat Dibromide: HED Risk Assessment for Tolerance Reassessment Eligibility Document (TRED.),*" p. 10 in docket ID number EPA–HQ–OPP–2010–0920.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level generally referred to as a population-adjusted dose (PAD) or a

reference dose (RfD) and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for diquat dibromide used for human risk assessment can be found at *http://www.regulations.gov* in the document "*Diquat Dibromide: Human Health Risk Assessment for the Section 18 Use on Canola in Oklahoma and Kentucky,*" p. 3 in docket ID number EPA–HQ–OPP–2010–0920.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to diquat dibromide, EPA considered exposure under the petitioned-for tolerances as well as all existing diquat dibromide tolerances in 40 CFR 180.226. EPA assessed dietary exposures from diquat dibromide in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

Such effects were identified for diquat dibromide. In the acute neurotoxicity study in rats, clinical signs of systemic toxicity (e.g., piloerection, diarrhea, urinary incontinence, upward curvature of the spine, subdued behavior) and decreased body-weight gains were observed after a single dose. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT) for all existing uses of diquat dibromide and the proposed new use on canola.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed tolerance-level residues and 100 PCT for crops with direct diquat uses. For crops with tolerances to cover irrigation with diquat-treated water, anticipated residue levels from irrigation trials were used in conjunction with estimates of percent of crops irrigated. For fish, average residues were assumed. Default processing factors from Dietary Exposure Evaluation Model v.7.81 were used in the analysis for all processed commodities, except potato chips and dried potato flakes, which have their own tolerances based on submitted processing data.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified diquat dibromide in Group E (evidence of non-carcinogenicity to humans). Therefore, an exposure assessment to evaluate cancer risk is unnecessary for this chemical.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to section 408(f)(1) of FFDCA that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such Data Call-Ins as are required by section 408(b)(2)(E) of FFDCA and authorized under section 408(f)(1) of FFDCA. Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition* a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition* b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition* c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of FFDCA, EPA may require registrants to submit data on PCT.

The Agency estimated the PCT for existing uses as follows:

EPA estimated PCT for several commodities that have tolerances to cover inadvertent residues of diquat from irrigation with diquat dibromide-treated water: Barley 36%; corn 19%; legume vegetables (subgroup 6C) 32%; oats 7%; sorghum 15%; soybean 9%; sugarcane 54%; and wheat 14%. One hundred PCT was assumed for all other irrigated crops and crops with direct diquat dibromide uses.

EPA estimated PCT for these commodities by estimating the percent crop irrigated, which serves as an upperbound for crops that may be exposed to diquat in irrigation water. The percent crop irrigated is an estimate of the share of total production that is irrigated, and is based on 2009 data from USDA's National Agricultural Statistics Service. Use of these estimates in the exposure assessment is conservative, because it is the equivalent of assuming 100% of irrigated crops are irrigated with water from diquat-treated canals. In fact, even in areas with surface water delivery systems, all irrigation canals may not be treated with diquat. Additionally, some crops, even in the heavily irrigated areas of the West, are not irrigated, such as dryland grain production.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which diquat dibromide may be applied in a particular area.

2. *Dietary exposure from drinking water*. Diquat dibromide is registered for both terrestrial and aquatic uses. The Agency used screening level water exposure models to estimate residues of diquat in drinking water from the terrestrial uses. These simulation

models take into account data on the physical, chemical, and fate/transport characteristics of diquat dibromide. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of diquat dibromide from terrestrial uses for acute exposures are estimated to be 13.2 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The EDWCs for chronic exposures are estimated to be 0.4 ppb for surface water and 0.006 ppb for ground water.

Diquat dibromide is registered for aquatic weed control and, as such, may be applied directly to bodies of water. The maximum contaminant level (MCL) for diquat established by the EPA Office of Water is 20 ppb. EPA does not expect residues from direct applications of diquat dibromide to water to exceed the MCL because of the tendency of diquat to sorb nearly irreversably to soil and sediment.

Since direct aquatic applications are estimated to result in higher concentrations of diquat in drinking water than terrestrial uses, EPA used the MCL of 20 ppb to assess the contribution to drinking water in both the acute and chronic dietary risk assessments.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Diquat dibromide is currently registered for the following uses that could result in residential exposures: Applications to turf, recreational ponds and lakes; general weed control in and around home and garden sites; and landscape uses by residential handlers. EPA assessed residential exposure using the following assumptions: Residential handlers may receive short-term dermal and inhalation exposure when applying diquat dibromide products. EPA assessed short-term dermal and inhalation residential handler exposures for four scenarios: Mixing, loading, and applying products with a low-pressure handwand or backpack sprayer; and applying diquat dibromide products in an aerosol can or using a trigger pump sprayer. Adults and children may also be exposed to diquat dibromide residues on a short-term basis through dermal contact with treated turf and from swimming activities in treated recreational ponds and lakes. In addition, toddlers may receive short-term oral exposure from incidental ingestion during post-application activities on treated turf. EPA assessed the following post-application exposure scenarios:

i. Adult and toddler post-application dermal exposure,

ii. Recreational exposure from playing golf on treated turf,

iii. Toddlers' incidental ingestion of pesticide residues on lawns from hand-to-mouth transfer,

iv. Toddlers' object-to-mouth transfer from mouthing of pesticide-treated turfgrass,

v. Toddlers' incidental ingestion of soil from pesticide-treated residential areas, and

vi. Recreational exposure of adults and children from swimming in treated ponds and lakes.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found diquat dibromide to share a common mechanism of toxicity with any other substances, and diquat dibromide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that diquat dibromide does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for diquat dibromide includes developmental toxicity studies in rats, mice, and rabbits and a 2–generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility of fetuses or offspring in any of these studies.

In the developmental study in rats, fetal effects (decreased fetal, litter, and gravid uterine weights; an increased incidence of fetuses with hemorrhagic kidney; and delayed skeletal ossification) occurred at a higher dose than the dose causing effects in maternal animals (decreased body-weight gains and food consumption during dosing). At the LOAEL for fetal effects, maternal effects included one death and clinical signs (piloerection and subdued activity). In the developmental study in rabbits, fetal effects (decreased fetal body weight, an increased incidence of friable/mottled livers, and an increased incidence of minor skeletal alterations) also occurred at a higher dose than the dose causing maternal toxicity (body-weight loss and decreased food consumption). At the LOAEL for fetal effects, maternal effects included deaths and clinical signs (diarrhea, subdued activity, thin appearance, mucus, blood, little or no feces in tray). Results in the mouse developmental toxicity study were similar. Fetal effects (decreased fetal body weight and an increased incidence of overall skeletal alterations) occurred at a higher dose than the dose causing maternal toxicity (mortality, clinical signs (piloerection, respiratory sounds), and decreased body weight gain during the dosing period). Maternal effects at the LOAEL for fetal effects included additional clinical signs (abnormal posture, lethargy, tremors, unsteadiness on feet, emaciation, ptosis) and a slight decrease in body weight (91% of control) at termination.

In the 2–generation reproduction study in rats, offspring effects included a decreased number of live pups per litter on days 1–22, decreased pup body weight gain during lactation, and an increased incidence of kidney lesions. Parental effects, including clinical signs, ulceration of the tongue, and partial/

total cataract, were observed at the same dose causing toxicity in the offspring.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for diquat dibromide is adequate to assess its prenatal and postnatal toxicity. In accordance with Part 158 Toxicology Data requirements, an immunotoxicity study (Harmonized Test Guideline 870.7800) is required for diquat dibromide. In the absence of specific immunotoxicity studies, EPA has evaluated the available toxicity data for evidence of immunotoxicity. There are no indications in the available studies that organs associated with immune function, such as the thymus and spleen, are affected by diquat dibromide. Therefore, EPA does not believe that conducting immunotoxicity testing will result in a point of departure lower than those already selected for diquat dibromide, and an additional database uncertainty factor is not needed to account for the lack of this study.

ii. There is no indication that diquat dibromide is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that diquat dibromide results in increased susceptibility in *in utero* rats, rabbits, or mice in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. There are no significant residual uncertainties identified in the exposure databases for diquat dibromide. Additional information from the canola residue studies on the length of storage of canola samples prior to analysis and confirmatory residue data for canola are required. However, as explained in this Unit, EPA does not expect these data to have a measurable impact on exposure estimates for diquat dibromide.

a. Data from the West German and United Kingdom field trials on the length of storage of canola samples prior to analysis were not submitted. EPA is requiring these data; however, EPA already has data for other crops showing that diquat dibromide is stable in frozen storage for 6 to 8 months. In addition, based on its structure, EPA expects diquat dibromide to be stable in frozen storage much longer than the 6 to 8 months for which data are available. Therefore, EPA does not expect the length of time the samples were stored to affect its conclusions regarding the field trial studies.

b. EPA has determined that the residue trials conducted in European Union (EU) countries are adequate to support tolerances and conditional registration of diquat dibromide as a preharvest desiccant on canola in the United States. However, EPA is aware that the Interregional Research Project number 4 (IR-4) has conducted field trials in the U.S. that would support this same use pattern. Residues of diquat dibromide on canola grown in the U.S. are not expected to differ significantly from residues reported in the EU studies, since harvest aid/desiccant applications are made late in the growing season with little time between application and harvest. In addition, since the recommended tolerances for canola seed and meal have been increased by a factor of 2X to harmonize with Codex (See Unit IV.C below), there is little chance residues in the U.S. trials will exceed these tolerances. Nevertheless, since the IR-4 field work has already been completed and the study reports will be available in July, 2011, EPA is requiring that these studies be submitted as a condition of registration to confirm the tolerance levels. EPA notes that canola is a minor contributor to estimated dietary exposure in both the acute and chronic dietary exposure assessments, accounting for less than 1% of total exposure for the most highly exposed population subgroup (children 1 to 2 years old) in each case. Therefore, even if the U.S. field trials were to indicate higher residues than the EU trials, the impact on dietary exposure would be negligible.

The acute dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues. The chronic dietary exposure assessment was refined using reliable irrigation data from USDA, average residues for fish from valid residue studies, and anticipated residues for irrigated crops that were derived from valid irrigation trials. The established MCL of 20 ppb used in the acute and chronic dietary exposure assessments is a conservative value that is considered protective of exposures from both terrestrial and direct aquatic applications of diquat dibromide. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by diquat dibromide.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute aPAD and chronic cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to diquat dibromide will occupy 1% of the aPAD for children, 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to diquat dibromide from food and water will utilize 35% of the cPAD for children, 1 to 2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of diquat dibromide is not expected.

3. *Short-term risk*. Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Diquat dibromide is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to diquat dibromide.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 110 for infants and toddlers, 150 for children 6 to 12 years old, and 260 for teenagers and adults. The aggregate MOEs for infants and toddlers include dietary exposures from food and drinking water as well as dermal and incidental oral postapplication exposures from activities on treated turf. The aggregate MOE for children includes dietary exposures from food and drinking water as well as dermal postapplication exposure from activities on treated turf and exposures from swimming in ponds and lakes treated with diquat dibromide. The aggregate MOEs for teenagers and adult population subgroups include dietary exposures, residential handler dermal exposures, dermal postapplication

exposures from activities on treated turf, and exposures from swimming in ponds and lakes treated with diquat dibromide. EPA did not aggregate residential handler inhalation exposures with exposures by other routes in the aggregate exposure assessment for teenagers and adults, since the effects associated with inhalation exposure (increased mean lung weight in males, mottling and reddening of lungs in females, and lung lesions) are different from those used to assess the dermal and oral routes (body-weight loss and decreased food consumption). Inhalation MOEs for residential handlers ranged from 570 (aerosol can application) to 11,000,000 (trigger sprayer). Because EPA's level of concern for diquat dibromide is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

EPA did not establish a POD for use in assessing intermediate-term residential exposures, because diquat dibromide is not registered for any use patterns that would result in such exposures. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for diquat dibromide.

5. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, diquat dibromide is not expected to pose a cancer risk to humans.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to diquat dibromide residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (High Performance Liquid Chromatographic Method (HPLC)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*. Method A (a spectrophotometric method) in the Pesticide Analytical Manual (PAM) Vol. II. is also available to enforce tolerances for residues of diquat in/on plant and livestock commodities.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for diquat in or on rapeseed (which includes canola seed) at 2.0 ppm. This MRL is the same as the tolerance being established for diquat dibromide on canola, seed in the United States.

C. Revisions to Petitioned-For Tolerances

EPA has increased the tolerance level for canola, seed from 1.0 ppm to 2.0 ppm to harmonize with the established Codex MRL of 2.0 ppm for rapeseed. EPA has also increased the tolerance level for canola meal from 3.0 ppm to 6.0 ppm. The tolerance level for meal was derived by applying the maximum theoretical concentration factor of 3X for canola meal to the canola seed tolerance of 2.0 ppm.

EPA is also correcting minor errors in the regulations for diquat at 40 CFR 180.226, as follows: EPA is correcting typographical errors in the chemical name for diquat in paragraphs (a)(2)(i) and (a)(3). EPA is also removing paragraph (a)(4), which reads "There are no U.S. registrations as of December 6, 1995." This statement was originally included as a footnote to import tolerances for banana and coffee, established in the **Federal Register** of March 27, 1996 (61 FR 13474) (FRL–5348–1). The statement was inadvertently moved to a separate paragraph in subsequent editions of the CFR. EPA is correcting this error by removing paragraph (a)(4) and adding an updated statement regarding U.S. registrations as a footnote to the banana and coffee tolerances. The updated footnote to the table in paragraph (a)(3) reads "There are no U.S. registrations as of May 26, 2010."

V. Conclusion

Therefore, tolerances are established for residues of diquat, 6,7-dihydrodipyrido(1,2-a:2'1'-c)pyrazinediium derived from application of the dibromide salt and calculated as the cation, in or on canola, meal at 6.0 ppm; and canola, seed at 2.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such,

the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 18, 2010.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.226 is amended as follows:

i. Alphabetically add commodities to the table in paragraph (a)(1);

ii. Revise introductory text in paragraph (a)(2)(i);

iii. Revise paragraph (a)(3);

iv. Remove paragraph (a)(4); and

v. Redesignate paragraph (a)(5) as (a)(4).

The amendments read as follows:

§ 180.226 Diquat; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
* * *	* *
Canola, meal	6.0
Canola, seed	2.0
* * *	* *

(2)(i) Tolerances are established for residues of the herbicide diquat (6,7 dihydrodipyrido(1,2-a:2'1'-c)pyrazinediium) (calculated as the cation) derived from the application of the dibromide salt to ponds, lakes, reservoirs, marshes, drainage ditches, canals, streams, and rivers which are slow-moving or quiescent in programs of the Corp of Engineers or other Federal or State public agencies and to ponds, lakes and drainage ditches only where there is little or no outflow of water and which are totally under the control of the user, in or on the following food commodities:

* * * * *

(3) Tolerances are established for the plant growth regulator diquat (6,7 dihydrodipyrido(1,2-a:2'1'-c)pyrazinediium) derived from application of the dibromide salt and calculated as the cation in or on the following food commodites:

Commodity	Parts per million
Banana[1]	0.05
Coffee, bean, green[1]	0.05
Soybean, hulls	0.6

[1]There are no U.S. registrations as of May 26, 2010.

* * * * *

[FR Doc. 2010–12648 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0273; FRL–8825–3]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on multiple commodities which are identified and discussed later in this document. This regulation additionally revises several established tolerances for residues of novaluron. Makhteshim-Agan of North America, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 26, 2010. Objections and requests for hearings must be received on or before July 26, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0273. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0273 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 26, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2009–0273, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Tolerance

In the **Federal Register** of June 10, 2009 (74 FR 27538) (FRL–8417–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7547) by Makhteshim-Agan of North America, Inc., 4515 Falls of Neuse Road, Raleigh, NC 27609. The petition requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on sorghum, grain at 3 parts per million (ppm); sorghum, aspirated grain fractions at 25 ppm; sorghum, forage at 6 ppm; and sorghum, stover at 40 ppm. Additionally, the petition requested to amend existing tolerances of novaluron in or on poultry, fat from 0.40 ppm to 7.0 ppm; poultry, meat from 0.03 ppm to 0.40 ppm; poultry, meat byproducts from 0.04 ppm to 0.80 ppm; hog, fat from 0.05 ppm to 1.5 ppm; hog, meat from 0.01 ppm to 0.07 ppm; hog, meat byproducts from 0.01 ppm to 0.15 ppm; and eggs from 0.05 ppm to 1.5 ppm. That notice referenced a summary of the petition prepared by Makhteshim-Agan of North America, Inc., the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance for hog, meat byproducts and has additionally determined that individual tolerances on poultry, liver; poultry, kidney; hog, liver; and hog, kidney are necessary. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for novaluron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with novaluron follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Novaluron has low acute toxicity via the oral, dermal and inhalation routes of exposure. It is not an eye or skin irritant and is not a dermal sensitizer. In subchronic and chronic toxicity studies, novaluron primarily produced hematotoxic effects (toxicity to blood) such as methemoglobinemia, decreased hemoglobin, decreased hematocrit, and decreased RBCs (or erythrocytes) associated with increased erythropoiesis. Increased spleen weights and/or hemosiderosis in the spleen were considered to be due to enhanced removal of damaged erythrocytes and not to an immunotoxic effect.

There was no maternal or developmental toxicity seen in the rat and rabbit developmental toxicity studies up to the limit doses. In the 2–generation reproductive toxicity study in rats, both parental and offspring toxicity (increased spleen weights) were observed at the same dose. Reproductive toxicity (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) was observed at a higher dose than the hematotoxicity.

Clinical signs of neurotoxicity and neuropathology were seen in the rat acute neurotoxicity study at the limit dose. However, no signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at similar doses or in any other subchronic or chronic toxicity study in rats, mice or dogs. In addition, there were no clinical signs of toxicity observed in the acute oral toxicity study with novaluron (LD_{50} >5,000 milligrams/kilogram (mg/kg)). Therefore, there is no concern for neurotoxicity resulting from exposure to novaluron.

There was no evidence of carcinogenic potential in either the rat or mouse carcinogenicity studies and no evidence of mutagenic activity in the submitted mutagenicity studies, including a bacterial (*Salmonella, E. coli*) reverse mutation assay, an *in vitro* mammalian chromosomal aberration assay, an *in vivo* mouse bone-marrow micronucleus assay and a bacterial DNA damage/repair assay. Based on the results of these studies, EPA has classified novaluron as "not likely to be carcinogenic to humans."

Specific information on the studies received and the nature of the adverse effects caused by novaluron as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document: "Novaluron: Human-Health Risk Assessment for Proposed Section 3 Use on Grain Sorghum." at pages 27–30 in docket ID number EPA–HQ–OPP–2009–0273.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for novaluron used for human risk assessment is shown in the following Table.

SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NOVALURON FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (All populations)	Not applicable	None	An endpoint of concern attributable to a single dose was not identified. An acute RfD was not established.
Chronic dietary (All populations)	NOAEL = 1.1 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.011 mg/kg/day cPAD = 0.011 mg/kg/day	Combined chronic toxicity/carcinogenicity feeding in rat LOAEL = 30.6 mg/kg/day based on erythrocyte damage and turnover resulting in a regenerative anemia.

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose. RfD = reference dose. LOC = level of concern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to novaluron, EPA considered exposure under the petitioned-for tolerances as well as all existing novaluron tolerances in 40 CFR 180.598. EPA assessed dietary exposures from novaluron in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for novaluron; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA incorporated average percent crop treated (PCT) data for apples, cabbage, cotton, pears, and potatoes and estimated PCT data for the new use on sorghum; 100 PCT was assumed for the remaining food commodities. The Agency utilized anticipated residues (ARs) for most commodities, including meat, milk, hog, and poultry commodities. Average field trial residues were used for pome fruit, sugarcane, bushberry, *Brassica* leafy greens, stone fruit, bell pepper, nonbell pepper, cucumber, summer squash, cantaloupe, strawberry, succulent snap bean, dry bean seed, and Swiss chard, and average greenhouse trial residues for tomato. Empirical processing factors

for apple juice (translated to pear and stone fruit juice), tomato paste and puree, and Dietary Exposure Evaluation Model (DEEM) default processing factors for the remaining processed commodities were used to estimate anticipated residues in processed foods.

iii. *Cancer*. Based on the data summarized in Unit III.A., EPA has concluded that novaluron does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- Condition a: The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- Condition b: The exposure estimate does not underestimate exposure for any significant subpopulation group.
- Condition c: Data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency estimated the average PCT for existing uses as follows:

Apples at 15%; cabbage at 10%; cotton at 2.5%; pears at 10%; and potatoes at 2.5%.

In most cases, EPA uses available data from USDA/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and the National Pesticide Use Database for the chemical/crop combination for the most recent 6–7 years. EPA uses an average PCT for chronic dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than one. In those cases, 1% is used as the average PCT and 2.5% is used as the maximum PCT. EPA uses a maximum PCT for acute dietary risk analysis. The maximum PCT figure is the highest observed maximum value reported within the recent 6 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%.

The Agency estimated the PCT for new uses as follows:

Grain sorghum at 5%.

EPA utilized estimated PCT data in the chronic dietary risk assessment for the new use on grain sorghum, based on the market leader approach. The market leader approach is the comparison of the PCT with all chemicals of a specific type (i.e., herbicide, insecticide, etc.) on a specific crop and choosing the highest PCT (market leader) as the PCT for the new use. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial 5 years of actual use. The predominant factors that bear on whether the estimated PCT could be exceeded are: The extent of pest pressure on the crops in question; the pest spectrum of the new pesticide in comparison with the market leaders as well as whether the market leaders are well-established for this use; and resistance concerns with the market leaders.

Novaluron has a relatively narrow spectrum of activity compared to the market leaders and specifically targets *lepidopterous* insects, which are not key pests of grain sorghum. Additionally, there are no resistance or pest pressure issues identified for the use of novaluron on grain sorghum. All information currently available has been considered for use on grain sorghum, and EPA concludes that it is unlikely that the actual grain sorghum PCT with novaluron will exceed the estimated PCT for new uses during the next 5 years.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

2. *Dietary exposure from drinking water*. The residues of concern in drinking water are novaluron and its chlorophenyl urea and chloroaniline degradates. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for novaluron and its degradates in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of novaluron. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

The following models were used to assess residues of concern in drinking water: The Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) for parent novaluron in surface water; the First Index Reservoir Screening Tool (FIRST) for chlorophenyl urea and chloroaniline degradates in surface water; and the Screening Concentration in Ground Water (SCI-GROW) model for novaluron, chlorophenyl urea and chloroaniline in ground water. The estimated drinking water concentrations (EDWCs) of novaluron, chlorophenyl urea, and chloroaniline for chronic exposures for non-cancer assessments are estimated to be 0.76 parts per billion (ppb), 0.89 ppb and 2.6 ppb, respectively, for surface water and 0.0056 ppb, 0.0045 ppb and 0.0090 ppb, respectively, for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. The

highest drinking water concentrations were estimated for surface water. Of the three EDWC values for surface water, the chronic EDWC for the terminal metabolite, chloroaniline, is the highest (assuming 100% molar conversion from parent to aniline). This is consistent with the expected degradation pattern for novaluron. Therefore, for chronic dietary risk assessment, the water concentration value for chloroaniline of 2.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Novaluron is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has not found novaluron to share a common mechanism of toxicity with any other substances, and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that novaluron does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology database for novaluron includes rat and rabbit prenatal developmental toxicity studies and a 2–generation reproduction toxicity study in rats. There was no evidence of increased quantitative or qualitative susceptibility following *in utero* exposure to rats or rabbits in the developmental toxicity studies and no evidence of increased quantitative or qualitative susceptibility of offspring in the reproduction study. Neither maternal nor developmental toxicity was seen in the developmental studies up to the limit doses. In the reproduction study, offspring and parental toxicity (increased absolute and relative spleen weights) were similar and occurred at the same dose; additionally, reproductive effects (decreases in epididymal sperm counts and increased age at preputial separation in the F1 generation) occurred at a higher dose than that which resulted in parental toxicity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for novaluron is complete except for immunotoxicity testing. Recent changes to 40 CFR part 158 make immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA. Although effects were seen in the spleen in two studies, as explained in Unit III.A., EPA has concluded that novaluron does not directly target the immune system and the Agency does not believe that conducting a functional immunotoxicity study will result in a NOAEL lower than the regulatory dose for risk assessment; therefore, an additional database uncertainty factor is not needed to account for potential immunotoxicity.

ii. There were signs of neurotoxicity in the acute neurotoxicity study in rats, including clinical signs (piloerection, fast/irregular breathing), functional observation battery (FOB) parameters (head swaying, abnormal gait), and neuropathology (sciatic and tibial nerve degeneration). However, the signs observed were not severe, were seen only at the limit dose (2,000 mg/kg/day) and were not reproducible. No signs of neurotoxicity or neuropathology were observed in the subchronic neurotoxicity study in rats at doses up to 1,752 mg/kg/day in males and 2,000 mg/kg/day in females or in any other subchronic or chronic toxicity study in rats, mice or dogs, including the developmental and reproduction studies. In addition, no clinical signs of toxicity were observed in the acute oral toxicity study (LD_{50} > 5,000 mg/kg). Therefore, novaluron does not appear to be a neurotoxicant, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that novaluron results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2–generation reproduction study.

iv. Although storage stability data has been requested for grain sorghum forage, grain, and stover, there are no residual uncertainties identified in the exposure databases because acceptable storage stability data is available for various commodities which demonstrate the stability of novaluron in/or on food commodities for up to 15.3 months, which exceeds the longest storage time (9.0 months for grain sorghum forage) of the grain sorghum commodities in the field trials. The chronic dietary food exposure assessment utilized tolerance level residues or anticipated residues that are based on reliable field trial data, and reliable data from processing studies or worst case assumptions. The chronic assessment also utilized PCT data (average PCT for several currently registered commodities and estimated PCT data for the new use on grain sorghum), which have a valid basis and are considered to be reliable. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to novaluron in drinking water. Residential exposures are not expected. These assessments will not underestimate the exposure and risks posed by novaluron.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, novaluron is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to novaluron from food and water will utilize 32% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. There are no residential uses for novaluron.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Because no short- or intermediate-term adverse effect was identified, novaluron is not expected to pose a short- or intermediate-term risk.

4. *Aggregate cancer risk for U.S. population*. Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, novaluron is not expected to pose a cancer risk to humans.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to novaluron residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The following adequate enforcement methodologies are available to enforce the tolerance expression: A gas chromatography/electron-capture detection (GC/ECD) method and a high-performance liquid chromatography/ultraviolet (HPLC/UV) method. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits (MRLs) established for residues of novaluron in or on grain sorghum commodities associated with this petition. There are Codex MRLs established for poultry, meat; poultry, edible offal of; and eggs at 0.01 ppm; and meat (mammalian other than marine) at 10 ppm. Additionally, there are Canadian MRLs established for meat of hogs and meat byproducts of hogs at 0.01 ppm. EPA's analysis of data used to determine the secondary residues in animal commodities, including the dietary burden in the United States for registered/proposed uses of novaluron, supports establishing tolerances in poultry, meat at 0.40 ppm; poultry, liver and kidney at 0.8 ppm; hog, meat at 0.07 ppm; and egg at 1.5 ppm. Therefore, U.S. tolerances on these animal commodities cannot be harmonized with the associated Codex or Canadian MRLs.

C. Revisions to Petitioned-For Tolerances

Based on analysis of the data supporting the petition, EPA has revised the proposed tolerance for hog, meat byproducts from 0.15 ppm to 0.10 ppm. Additionally, the Agency has determined that individual tolerances on poultry, liver at 0.80 ppm; poultry, kidney at 0.80 ppm; hog, liver at 0.10 ppm; and hog, kidney at 0.10 ppm are necessary. These revisions are based on the following:

Several tolerances for secondary residues in animal commodities have been established for novaluron based on reasonably balanced dietary burdens (RBDBs) derived from feedstuff percentages. However, new RBDBs have been established based on the proposed/established uses of novaluron, thus necessitating revisions in the proposed/established tolerances for secondary residues in or on poultry and hog commodities. Therefore, the Agency has revised the proposed tolerance for hog, meat byproducts from 0.15 ppm to 0.10 ppm and has determined that individual tolerances are necessary for hog, liver and hog, kidney at 0.10 ppm; and poultry, liver and poultry, kidney at 0.80 ppm.

V. Conclusion

Therefore, tolerances are established for residues of novaluron, *N*-[[[3-chloro-4-[1,1,2-trifluoro-2-(trifluoromethoxy)ethoxy] phenyl]amino]carbonyl]-2,6-difluorobenzamide, in or on sorghum, grain, grain at 3.0 ppm; grain, aspirated fractions at 25 ppm; sorghum, grain, forage at 6.0 ppm; sorghum, grain, stover at 40 ppm; poultry, fat at 7.0 ppm; poultry, meat at 0.40 ppm; poultry, liver at 0.80 ppm; poultry, kidney at 0.80 ppm; poultry, meat byproducts at 0.80 ppm; hog, fat at 1.5 ppm; hog, meat at 0.07 ppm; hog, liver at 0.10 ppm; hog, kidney at 0.10 ppm; hog, meat byproducts at 0.10 ppm; and egg at 1.5 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the

Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.598 is amended in paragraph (a) as follows:

i. Add alphabetically "Grain, aspirated fractions"; "Hog, kidney"; "Hog, liver"; "Poultry, kidney"; "Poultry, liver"; "Sorghum, grain, forage"; "Sorghum, grain, grain"; and "Sorghum, grain, stover" to the table; and

ii. Revise the entries for "Egg"; "Hog, fat"; "Hog, meat"; "Hog, meat byproducts"; "Poultry, fat"; "Poultry, meat"; and "Poultry, meat byproducts." The added and revised entries to read as follows:

§180.598 Novaluron; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Egg	1.5
* * *	* *
Grain, aspirated fractions	25
* * *	* *
Hog, fat	1.5
Hog, kidney	0.10
Hog, liver	0.10
Hog, meat	0.07
Hog, meat byproducts	0.10
* * *	* *
Poultry, fat	7.0
Poultry, kidney	0.80
Poultry, liver	0.80
Poultry, meat	0.40
Poultry, meat byproducts	0.80
* * *	* *
Sorghum, grain, forage	6.0
Sorghum, grain, grain	3.0
Sorghum, grain, stover	40
* * *	* *

* * * * *

[FR Doc. 2010–12649 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5a

RIN 0906–AA86

Public Health Service Act, Rural Physician Training Grant Program, Definition of "Underserved Rural Community"

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Interim final rule with request for comment.

SUMMARY: This interim final rule (IFR) with request for comment is meant to comply with the statutory directive to issue a regulation defining "underserved rural community" for purposes of the Rural Physician Training Grant Program in section 749B of the Public Health Service Act, as amended by the Patient Protection and Affordable Care Act of 2010. This IFR is technical in nature. It will not change grant or funding eligibility for any other grant program currently available through the Office of Rural Health Policy (ORHP) or HRSA. For purposes of the Rural Physician Training Grant Program only, HRSA has combined existing definitions of "underserved" and "rural" by using the definition of rural utilized by the ORHP Rural Health Grant programs and the definition of "underserved" established by HRSA's Office of Shortage Designation (OSD) in the Bureau of Health Professions (BHPr).

DATES: *Effective Date:* This interim final rule is effective 30 days after May 26, 2010.

Comment Date: To be assured consideration, written or electronic comments must be received at one of the addresses provided below, no later than 5 p.m. on July 26, 2010.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: mgoodman@hrsa.gov.* Include RIN 0906–AA86 in the subject line of the message.
- *Mail:* Michelle Goodman, MAA, Office of Rural Health Policy, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, 10B–45, Rockville, MD 20857.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be available for public inspection and copying, including any personal information provided, at Parklawn Building, 5600 Fishers Lane, Room 10B–45, Rockville, Maryland 20857, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Michelle Goodman, MAA, at the mail or e-mail address above or by telephone at 301–443–0835.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The ORHP was authorized in December 1987 through Public Law 100–203 and is located in the HRSA. Congress charged ORHP with informing and advising HHS on matters affecting rural hospitals and health care and

coordinating activities within HHS that relate to rural health care.

Section 10501(l) of Public Law 111–148 adds Section 749B to the Public Health Service Act (42 U.S.C. 293k *et seq*.) by authorizing the Rural Physician Training Grant Program. HRSA is authorized to establish this new grant program for the purposes of assisting eligible entities in recruiting students most likely to practice medicine in underserved rural communities; providing rural-focused training and experience; and increasing the number of recent allopathic and osteopathic medical school graduates who practice in underserved rural communities. As required by section 749B(f), not later than 60 days after the date of enactment of Public Law 111–148, the Secretary shall, by regulation, define "underserved rural community" for purposes of this section. HRSA must create an operational definition of "underserved rural community" to help in determining how to allocate funding for the approved activities in the grant.

II. Waiver of Proposed Rulemaking and Comment

We note that ordinarily we publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. However, for the reasons that follow, the agency has determined to proceed directly with this IFR with request for comment pursuant to 5 U.S.C. 553(b)(3)(B) because it has determined that good cause exists which makes the usual notice and comment procedure impractical, unnecessary, and contrary to the public interest. Nevertheless, we are providing the public with a 60-day period following publication of this document to submit comments on the IFR, and appropriate comments received will be used to determine whether to amend this rule and/or will be used to inform the development of the program guidance which will delineate the structure and requirements for the grant program (upon appropriation of funds to implement the grant).

As mentioned above, section 749B(f) requires the Secretary to publish this regulation 60 days after the date of enactment of Public Law 111–148. We have determined that the usual notice and comment procedure would be impractical in this case because those procedures take significantly longer than 60 days.

We also believe it is unnecessary to undertake rulemaking involving prior notice and comment because this IFR will have limited impact, as it defines "underserved rural communities" only for purposes of the Rural Physician Training Grant Program and will not change grant or funding eligibility for any other grant program currently available through ORHP or HRSA.

Additionally, we believe it is unnecessary to undertake prior notice and comment rulemaking because, while funds for this program have not yet been appropriated, such funds might become available with little notice and awarding the funds quickly would serve an important public interest because of the necessity of assisting underserved rural communities to attract and retain needed allopathic and osteopathic medical school graduates to serve in their communities.

III. Definition of "Underserved Rural Community"

HRSA proposes to combine two existing definitions for "underserved" and "rural" by using the rural definition utilized by the ORHP Rural Health Grant Programs and the geographic based Health Professions Shortage Area (HPSA) and Medically Underserved Area (MUA) definitions as established by HRSA's OSD in the BHPr.

A. Definition of Rural

For the purposes of the Rural Physician Training Grant Program outlined in section 749B of the Public Health Services Act, HRSA must define "underserved rural communities." In order to maintain consistency through the various Rural Health Grant Programs, we propose to use the definition for "rural" that is used for the ORHP Rural Health Grant Programs. ORHP uses a two-tiered method to determine geographic eligibility for its grant programs. All counties that are not designated as part of a Metropolitan Statistical Area (MSAs) by the Office of Management and Budget (OMB) are considered rural. This means that counties classified as part of a Micropolitan area are also considered rural. Metropolitan and Micropolitan statistical areas (metro and micro areas) are geographic entities defined by the OMB for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics. A metro area contains a core urban area of 50,000 or more population, and a micro area contains an urban core of at least 10,000 (but less than 50,000) population. Each metro or micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The current list of MSAs and updates are available on the Internet at *http://www.census.gov/population/www/metroareas/metrodef.html.*

Due to the fact that entire counties are designated as Metropolitan when, in fact, large parts of many of these counties may be rural in nature, ORHP has sought a method of identifying sub-county sections of these Metropolitan counties that should also be considered/designated as rural. Rather than exclude large numbers of arguably rural citizens from eligibility for the Rural Health Grant Programs, ORHP sought a rational, data-driven method to identify/designate rural areas inside of Metropolitan counties. ORHP funded the development of "Rural/Urban Commuting Area Codes" (RUCAs), by the WWAMI Rural Research Center at the University of Washington in cooperation with the Department of Agriculture's Economic Research Service, to categorize various levels of rurality and make possible designation of "rural" areas within MSAs. Using commuting data from the Census Bureau, every census tract in the United States is assigned a RUCA code. Currently, there are ten primary RUCA codes with 30 secondary codes based on 2000 Census data and 2004 ZIP Code areas (*see* Table 1).

TABLE 1—RURAL-URBAN COMMUTING AREAS (RUCAS), 2000

1	Metropolitan area core: Primary flow within an urbanized area (UA)
	1.0 No additional code.
	1.1 Secondary flow 30% to 50% to a larger UA.
2	Metropolitan area high commuting: Primary flow 30% or more to a UA.
	2.0 No additional code.
	2.1 Secondary flow 30% to 50% to a larger UA.
3	Metropolitan area low commuting: Primary flow 5% to 30% to a UA.
	3.0 No additional code.

TABLE 1—RURAL-URBAN COMMUTING AREAS (RUCAS), 2000—Continued

4	Micropolitan area core: Primary flow within an Urban Cluster (UC) of 10,000 to 49,999 (large UC).
	4.0 No additional code.
	4.1 Secondary flow 30% to 50% to a UA.
	4.2 Secondary flow 10% to 30% to a UA.
5	Micropolitan high commuting: Primary flow 30% or more to a large UC.
	5.0 No additional code.
	5.1 Secondary flow 30% to 50% to a UA.
	5.2 Secondary flow 10% to 30% to a UA.
6	Micropolitan low commuting: Primary flow 10% to 30% to a large UC.
	6.0 No additional code.
	6.1 Secondary flow 10% to 30% to a UA.
7	Small town core: Primary flow within an Urban Cluster of 2,500 to 9,999 (small UC).
	7.0 No additional code.
	7.1 Secondary flow 30% to 50% to a UA.
	7.2 Secondary flow 30% to 50% to a large UC.
	7.3 Secondary flow 10% to 30% to a UA.
	7.4 Secondary flow 10% to 30% to a large UC.
8	Small town high commuting: Primary flow 30% or more to a small UC.
	8.0 No additional code.
	8.1 Secondary flow 30% to 50% to a UA.
	8.2 Secondary flow 30% to 50% to a large UC.
	8.3 Secondary flow 10% to 30% to a UA.
	8.4 Secondary flow 10% to 30% to a large UC.
9	Small town low commuting: Primary flow 10% to 30% to a small UC.
	9.0 No additional code.
	9.1 Secondary flow 10% to 30% to a UA.
	9.2 Secondary flow 10% to 30% to a large UC.
10	Rural areas: Primary flow to a tract outside a UA or UC.
	10.0 No additional code.
	10.1 Secondary flow 30% to 50% to a UA.
	10.2 Secondary flow 30% to 50% to a large UC.
	10.3 Secondary flow 30% to 50% to a small UC.
	10.4 Secondary flow 10% to 30% to a UA.
	10.5 Secondary flow 10% to 30% to a large UC.
	10.6 Secondary flow 10% to 30% to a small UC.

Those Census tracts within MSAs that have RUCA codes 4 through 10 are considered rural for the purposes of ORHP Rural Health Grant Programs. In addition, those Census Tracts within MSAs that have RUCA codes 2 or 3, are individually larger than 400 square miles in area, and have a population density of less than 30 people per square mile, also are considered rural. (More information on RUCAs is available at *http://www.ers.usda.gov/briefing/Rurality/RuralUrbanCommutingAreas/* or at *http://depts.washington.edu/uwruca/*.) ORHP has previously used this definition of rural for Rural Health Grant Programs. The RUCA definition is further described in a **Federal Register** Notice published on May 3, 2007 (Vol. 72, No. 85; pgs 24589–24591). In preparing guidance for the Rural Physician Training Grant Program, HRSA will use the most current list of eligible rural counties as determined by the ORHP and published on their Web site at *http://datawarehouse.hrsa.gov/RuralAdvisor/RuralHealthAdvisor.aspx.*

In summary, for the purposes of the Rural Physician Training Grant Program, HRSA is proposing to define the rural portion of the "underserved rural communities" as:

(a) Any non-Metropolitan County, including Micropolitan counties; or

(b) Within a Metropolitan county, all Census Tracts that are assigned a RUCA code of 4–10; or

(c) Census Tracts within a Metropolitan Area with RUCA codes 2 and 3 that are larger than 400 square miles and have population density of less than 30 people per square mile.

B. Definition of Underserved

As previously stated, for the purposes restricted to the Rural Physician Training Grant Program, outlined in section 749B of the Public Health Services Act, HRSA is also required to define the "underserved" portion of the term "underserved rural communities."

HRSA's OSD in the BHPr is responsible for developing shortage/underservice designation criteria and for using the established criteria to decide if a geographic area, population group, or facility is a HPSA or a Medically Underserved Area or Population (MUA/P), or both. Three types of HPSAs may be designated: those with shortages of primary medical care, dental, or mental health providers. Urban or rural geographic areas and population groups may be designated as MUA/P or HPSA; certain medical or other public facilities are also eligible for HPSA designation.

Location in a designated HPSA and MUA/P establishes initial eligibility for many Federal and State programs (such as National Health Service Corps placements, Health Center funding, Federally Qualified Health Center and/or Rural Health Clinic certification). The criteria established to identify geographic areas, population groups, or facilities with shortages of primary health care, dental, or mental health providers are located at 42 CFR Part 5. HPSA designations are based on the population-to-provider ratio in a defined service area, together with other factors indicative of unusually high needs or insufficient capacity. More information on all the factors needed to be designated as a HPSA can be found at the OSD's Web site: *http://bhpr.hrsa.gov/shortage/hpsadesignation.htm.* MUA/P designations utilize an Index of Medical Underservice to calculate a score for each area, based on a weighted combination of four factors: The ratio of primary medical care physicians per 1,000 population, infant mortality rate, percentage of the population with

incomes below the poverty level, and percentage of the population age 65 or over.

Information on HPSA and MUA/P designation status, including the date of the most recent designation or update, is available on the HRSA Data Warehouse Web site: *http://datawarehouse.hrsa.gov/GeoAdvisor/ShortageDesignationAdvisor.aspx,* or at the HRSA Web site *http://hpsafind.hrsa.gov/* and *http://muafind.hrsa.gov.* In preparing guidance for the Rural Physician Training Grant Program, HRSA will use the most current list of eligible HPSAs and MUAs as determined by the OSD and published on their Web site. The OSD Web site list is the most up-to-date list available and removes areas that no longer qualify for designation, even if the **Federal Register** list has not yet been updated.

As required by Section 5602 of Public Law 111–148, HRSA plans to establish a comprehensive methodology and criteria for designation of MUPs and Primary Care HPSAs [under sections 330(b)(3) and 332 of the Public Health Service (PHS) Act, respectively], using a Negotiated Rulemaking process as outlined in the **Federal Register** on May 11, 2010 (Volume 75, Number 90). Any change that HRSA makes to the methodology used to determine designations will not alter the definition for the Rural Physician Training Grant Program.

For the purposes of the Rural Physician Training Grant Program, HRSA is defining the "underserved" portion of the term "underserved rural community" to include current:

(a) Geographic Primary Care Health Professions Shortage Areas (HPSAs), (Federally designated under section 332(a)(1)(A) of the PHS Act) located in rural areas as defined above; or

(b) Medically Underserved Areas (MUAs) (Federally designated under section 330(b)(3) of the PHS Act) located in rural areas as defined above.

HRSA is not including Federally-designated Dental or Mental Health HPSAs for purposes of defining "underserved rural communities" for the Rural Physician Training Grant Program, as this Program is specifically targeted to students at or recent graduates of schools of allopathic and osteopathic medicine (Sec. 749B (a–b)), and therefore not focusing on Mental Health or Dental Health providers.

For purposes of defining "underserved rural communities" for the Rural Physician Training Grant Program, HRSA is not including population-based HPSA designations, MUP designations, or facility-based HPSA designations.

The operational definition of "underserved rural community" will be applied to determine whether applicants meet the statutory eligibility and priority criteria of the Rural Physician Training Grant program. These requirements are based on the ability to identify geographic places. The MUP and population HPSA designations are used to target a group of people, not a geographic place. The facility-based designation is given to an actual facility. While there is a geographic boundary within which qualifying underserved populations are located, this boundary also contains many people who are not underserved (*e.g.* homeless populations within a community that would otherwise not be underserved). Using this boundary as if it captures the same level of underservice as geographic shortage areas (without additional restrictions on the specific patient population within that boundary) could easily result in qualifying programs and program designs which do not fulfill the grant program's intended purpose.

HRSA is seeking public comments, through this IFR, on the following definition for "Underserved Rural Community—Those communities that:

(a) Located in:

i. Any non-Metropolitan County, including Micropolitan counties; or

ii. Within a Metropolitan county, all Census Tracts that are assigned Rural-Urban Commuting Area Codes (RUCAs) code of 4–10; or

iii. Census Tracts within a Metropolitan Area with RUCA codes 2 and 3 that are larger than 400 square miles and have population density of less than 30 people per square mile; and

(b) Being in a current:

i. Federally-designated Primary Health Care Geographic Health Professions Shortage Area (HPSA), (under section 332(a)(1)(A) of the PHS Act) or

ii. Federally-designated Medically Underserved Area (MUA) (under section 330(b)(3) of the PHS Act).

IV. Collection of Information Requirements

This IFR contains no new information collection requirements subject to review by OMB under the Paperwork Reduction Act.

V. Regulatory Impact Analysis

A. Introduction

This IFR is technical in nature. This new regulation is meant to define "underserved rural communities" solely for purposes related to the Rural Physician Training Grant Program, as outlined in section 749B of the Public Health Service Act. This will not change grant or funding eligibility for any other grant program administered through ORHP or HRSA.

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) (UMRA), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

B. Why Is This Rule Needed?

This regulation is required to implement section 749B of the Public Health Service Act (42 U.S.C. 293) as amended by section 10501(l) of Public Law 111–148.

C. Costs and Benefits

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). We have determined that this IFR is not an economically significant rule. Moreover, the Secretary has determined that this IFR is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801.

D. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The Secretary has determined that no resources are required to implement the requirements in this IFR. Therefore, in accordance with the Regulatory Flexibility Act of 1980 and the Small Business Regulatory Enforcement Act of 1996, which amended the Regulatory Flexibility Act, the Secretary certifies that this IFR will not, if implemented, have a significant impact on a substantial number of small entities.

E. Executive Order 13132—Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final

rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. The Secretary has reviewed this IFR in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." This rule would not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires cost-benefit and other analyses before any rulemaking if the rule includes a "Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year." The current inflation adjusted statutory threshold is approximately $130 million. The Department has determined that this rule would not constitute a significant rule under the Unfunded Mandates Reform Act, because it would impose no mandates.

In accordance with the provisions in Executive Order 12866, this IFR was reviewed by OMB.

Dated: May 18, 2010.

Mary Wakefield,

Administrator, Health Resources and Services Administration.

Approved: May 20, 2010.

Kathleen Sebelius,

Secretary.

List of Subjects in 42 CFR Part 5a

Grants administration, Health professions, Physicians, Rural areas, Shortages, Underserved.

■ For the reasons set forth in the preamble, the Department amends 42 CFR Chapter I to add Part 5a as follows:

PART 5a—RURAL PHYSICIAN TRAINING GRANT PROGRAM

Sec.

Authority: Sec. 749B of the Public Health Service Act (42 U.S.C. 293k) as amended.

§ 5a.1—Statutory basis and purpose.

This part implements section 749B(f) of the Public Health Service Act. These provisions define "underserved rural community" for purposes of the Rural Physician Training Grant Program.

§ 5a.2 Applicability.

This part applies to grants made under section 749B of the Public Health Service Act.

§ 5a.3—Definition of Underserved Rural Community.

Underserved Rural Community means a community:

(a) Located in:

(1) A non-Metropolitan County or Micropolitan county; or

(2) If it is within a Metropolitan county, all Census Tracts that are assigned a Rural-Urban Commuting Area (RUCAs) codes of 4–10; or

(3) Census Tracts within a Metropolitan Area with RUCA codes 2 and 3 that are larger than 400 square miles and have population density of less than 30 people per square mile; and

(b) Located in a current:

(1) Federally-designated Primary Health Care Geographic Health Professions Shortage Area, (under section 332(a)(1)(A) of the Public Health Service Act) or

(2) Federally-designated Medically Underserved Area (under section 330(b)(3) of the Public Health Service Act).

[FR Doc. 2010–12557 Filed 5–21–10; 11:15 am]

BILLING CODE 4165–15–P

FEDERAL MARITIME COMMISSION

46 CFR Part 501, 502, and 535

[Docket No. 10–04]

RIN 3072–AC37

Agency Reorganization and Delegations of Authority

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (FMC or Commission) amends its regulations relating to agency organization to reflect the reorganization of the agency that took effect January 31, 2010, and to delegate authority to certain FMC bureaus and offices in order to improve the FMC's ability to carry out its statutory responsibilities over the ocean shipping industry in a more responsive manner to the industry's changing needs. This rule also corrects typographical errors in two sections in the Commission's rules.

DATES: Effective May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Fenneman, Deputy General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5740, *GeneralCounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The FMC amends Part 501 and § 502.604 of Part 502 of Title 46 of the Code of Federal Regulations to reflect the reorganization of the agency that took effect on January 31, 2010. The FMC was reorganized by restoring the position of the Managing Director to serve as the Commission's Chief Operating Officer responsible for the management and coordination of the Commission's major organizational components to ensure all offices are cohesively directed toward achieving fair and efficient ocean transportation that helps improve the nation's economy. The reorganization also gives heightened priority to the role of the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS), which assists exporters and other consumers and works with the public and ocean transportation industry to mediate disputes without costly lawsuits. The Director of CADRS will serve as the Commission's Ombudsman and handle inquiries and complaints about industry issues and Commission services. CADRS will continue to provide the public and ocean transportation industry a variety of impartial, speedy, and confidential alternative dispute resolution (ADR) services, such as mediation and arbitration. As an independent office, it will be able to assist parties in a neutral and confidential manner, enabling disputants to discuss matters while knowing that their discussions and any information revealed in a dispute resolution proceeding will not be made available to any other Commission official or staff members. This rule also corrects typographical errors in § 501.41(a) of Part 501 and § 535.401(g) of Part 535.

Because the changes made in this proceeding only address internal agency operating procedure and organization, which do not require notice and public procedure pursuant to the Administrative Procedure Act, 5 U.S.C. 553, this rule is published as final. The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This rule is not a "major rule" under 5 U.S.C. 804(2).

List of Subjects

46 CFR Part 501

Administrative practice and procedure, Authority delegations, Organization and functions, Seals and insignia.

46 CFR Part 502

Administrative practice and procedure, Claims, Equal access to justice, Investigations, Lawyers, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 535

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

■ For the reasons stated in the supplementary information, the Federal Maritime Commission amends 46 CFR Parts 501, 502, and 535 as follows.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. 301–307, 40101–41309, 42101–42109, 44101–44106; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89–56, 70 Stat. 195; 5 CFR Part 2638; Pub. L. 104–320, 110 Stat. 3870.

■ 2. Amend § 501.3 by revising paragraphs (c), (d), (h), and (i) to read as follows:

§ 501.3 Organizational components of the Federal Maritime Commission.

* * * * *

(c) Office of the Secretary. (*FOIA and Privacy Act Officer, Federal Register Liaison, Performance Improvement Officer.*)

(d) Office of the General Counsel. (*Ethics Official, Legislative Counsel.*)

* * * * *

(h) Office of the Managing Director. (*Chief Operating Officer, Chief Acquisition Officer, Audit Follow-up and Management Controls Official, Chief Information Officer, Chief Financial Officer, Competition Advocate, Senior Agency Official for Privacy.*)

(1) Office of Budget and Finance.

(2) Office of Human Resources. (*Information Security Officer.*)

(3) Office of Information Technology. (*Chief Technology Officer, IT Security Officer.*)

(4) Office of Management Services. (*Physical Security, FMC Contracting Officer.*)

(5) Bureau of Certification and Licensing.

(i) Office of Passenger Vessels and Information Processing.

(ii) Office of Ocean Transportation Intermediaries.

(6) Bureau of Trade Analysis.

(i) Office of Agreements.

(ii) Office of Economics and Competition Analysis.

(iii) Office of Service Contracts and Tariffs.

(7) Bureau of Enforcement.

(8) Area Representatives.

(i) Office of Consumer Affairs and Dispute Resolution Services. (*Ombudsman, Senior Dispute Resolution Specialist.*)

* * * * *

■ 3. Revise § 501.4 to read as follows:

§ 501.4 Lines of responsibility.

(a) *Chairman.* The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of the Managing Director, and officials performing the functions of Information Security Official, report to the Chairman of the Commission.

(b) *Office of the Managing Director.* The Bureau of Certification and Licensing, Bureau of Enforcement, Bureau of Trade Analysis, Area Representatives, Office of Budget and Finance, Office of Human Resources, Office of Information Technology, and Office of Management Services report to the Office of the Managing Director. The Office of Equal Employment Opportunity and the Office of the Inspector General receive administrative guidance from the Managing Director. All other units of the Commission receive administrative direction from the Managing Director.

■ 4. Amend § 501.5 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Revise paragraph (c)(4);

■ c. Revise paragraph (d)(7);

■ d. Remove paragraph (d)(10);

■ e. Revise paragraph (f);

■ f. Revise paragraph (h);

■ g. Remove and reserve paragraph (i)(3);

■ h. Revise paragraph (k);

■ i. Amend paragraph (l)(1) by revising the first sentence; and

■ j. Add a new paragraph (l)(3) to read as follows.

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

* * * * *

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and ensures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Managing Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under the Freedom of Information Act, the Privacy Act, and the Federal Activities Inventory Reform Act of 1998. The Chairman appoints the heads of major administrative units after consultation with the other Commissioners. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

* * * * *

(c) * * *

(4) Serves as the lead executive responsible for development, in coordination with the Managing Director, of the agency's strategic plan, monitoring of results of strategic goals and objectives, and preparation of all required reports.

(d) * * *

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; represents the Commission and acts as technical advisor in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other government agencies and programs and international organizations.

* * * * *

(f) *Office of the Managing Director.*

(1) The Managing Director:

(i) As Chief Operating Officer, is responsible to the Chairman for the management and coordination of Commission programs managed by the Bureaus of Certification and Licensing; Trade Analysis; Enforcement; the Commission's Area Representatives; Offices of Budget and Finance; Human

Resources; Management Services; and Information Technology, as more fully described below, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman. The Managing Director also provides administrative guidance to the Offices of Equal Employment Opportunity and Inspector General;

(ii) The Office initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations;

(iii) Ensures the periodic review and updating of Commission Orders;

(iv) Interprets and administers governmental policies and programs in a manner consistent with Federal guidelines, including those involving financial management, human resources, information technology, and procurement;

(v) Is responsible for coordinating records management activities and developing Paperwork Reduction Act clearances for submission to the Office of Management and Budget;

(vi) Is responsible for directing and administering the Commission's training and development function;

(vii) Acts as the Commission's representative to the Small Agency Council;

(viii) Is the agency's Chief Acquisition Officer under the Services Acquisition Reform Act of 2003, Public Law 108–136, 117 Stat. 1663 and Commission Order 112;

(ix) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders 103 and 106;

(x) Is the agency's Chief Financial Officer;

(xi) Is the agency's Chief Operating Officer;

(xii) Serves as the Senior Agency Official for Privacy under Commission Order 89;

(2) The Deputy Managing Director is the Commission's Competition Advocate under Commission Order 112.

(3) The Assistant Managing Director is the Commission's Chief Information Officer and Records Management Officer. The Assistant Managing Director provides direction to the Office of Information Technology in interpreting and administering governmental policies and programs for information technology in a manner consistent with federal guidelines. The Assistant Managing Director initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations with respect to the use and security of information and technology.

(4) Other offices under the management direction of the Managing Director are as follows:

(i) The *Office of Budget and Finance,* under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, ensures accountability for official passports; and assists in the development of proper levels of user fees.

(ii) The *Office of Human Resources,* under the direction and management of the Office Director, plans and administers a complete personnel management program including: Recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; personnel security; and the Commission's Human Capital Management Plan. The Office Director serves as the Commission's Human Capital Management Officer. A human resources specialist within the Office serves as the Information Security Officer under Commission Order 80.

(iii) The *Office of Information Technology,* under the direction and management of the Office Director, administers the Commission's information technology ("IT") program under the Paperwork Reduction Act of 1995, as amended, as well as other applicable laws that prescribe responsibility for operating the IT program. The Office provides administrative support with respect to information technology to the program operations of the Commission. The Office's functions include: Conducting IT management studies and surveys; managing data and voice telecommunications; developing and managing databases and applications; and administering IT contracts. The Office is also responsible for managing the computer security program. The Director of the Office serves as the Commission's Chief Technology Officer; the IT Security Officer reports to the Director of the Office under Commission Order 80.

(iv) The *Office of Management Services,* under the direction and management of the Office Director, directs and administers a variety of management support service functions of the Commission including conducting internal management reviews and recommending changes in organization and workflow processes. The Director of the Office is the Commission's principal Contracting Officer under Commission Order 112. Programs include: Acquisition of all goods and services used by the Commission; building security and emergency preparedness; real and personal property management; printing and copying; mail services; graphic design; equipment maintenance; and transportation. The Office Director is the agency's liaison with the Small Agency Council's Procurement and Administrative Services Committees and with the General Services Administration ("GSA") and the Department of Homeland Security ("DHS") on the Building Security Committee.

* * * * *

(h) Under the direction and management of the Bureau Director, the *Bureau of Trade Analysis,* through its Office of Agreements; Office of Economics and Competition Analysis; and Office of Service Contracts and Tariffs, reviews agreements and monitors the concerted activities of common carriers by water, reviews and analyzes service contracts, monitors rates of government controlled carriers, reviews carrier published tariff systems under the accessibility and accuracy standards of the Shipping Act of 1984 (46 U.S.C. 40501(a)–(g)), responds to inquiries or issues that arise concerning service contracts or tariffs, and is responsible for competition oversight and market analysis.

* * * * *

(k) The *Office of Consumer Affairs and Dispute Resolution Services,* under the direction and management of the Office Director, has responsibility for developing and implementing the Alternative Dispute Resolution Program, responds to consumer inquiries and complaints, and coordinates the Commission's efforts to resolve disputes within the shipping industry. The Office reviews existing and proposed legislation and regulations for impact on the shipping industry and its consumers and recommends appropriate policies and regulations to facilitate trade. The

Director of the Office of Consumer Affairs and Dispute Resolution Services is designated as the agency's Senior Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act, Public Law 101–552, as amended by section 4(a) of Public Law 104–320. The Director also serves as the Commission's Ombudsman.

(l) * * *

(1) The *Executive Resources Board* ("ERB") is composed of members of the Senior Executive Service as designated by the Chairman. * * *

* * * * *

(3) The *Maritime Environmental Committee* ("MEC") is an internal Committee made up of Commission staff as designated by the Chairman. The MEC advises the Chairman and the Commission on issues involving environmental and sustainable shipping practices, initiatives, operational proposals, and similar matters affecting entities regulated by the Commission to assist the Commission in its review and regulation of agreements and in its statutory responsibility for ensuring an efficient ocean transportation system.

■ 5. Amend § 501.24 by revising paragraph (h) to read as follows:

§ 501.24 Delegation to the Secretary.

* * * * *

(h) Authority, in the absence or preoccupation of the Managing Director, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.

■ 6. Revise § 501.25 to read as follows:

§ 501.25 Delegation to and redelegation by the Managing Director.

The authorities listed in this section are delegated to the Managing Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than $1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. 3721.

(b) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

(c)(1) Authority to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under paragraph (c)(1) of this section is redelegated to the Director, Office of Budget and Finance.

(d)(1) Authority to classify all positions GS–1 through GS–15 and wage grade positions.

(2) The authority under paragraph (d)(1) of this section is redelegated to the Director, Office of Human Resources.

■ 7. Amend § 501.28 by revising paragraph (a) to read as follows:

§ 501.28 Delegation to the Director, Bureau of Enforcement.

* * * * *

(a) As set forth in § 502.604(g) of this chapter, the Director, Bureau of Enforcement, has the delegated authority to issue Notice and Demand Letters and to compromise civil penalty claims, subject to the prior approval of the Managing Director. This delegation shall include the authority to compromise issues relating to the retention, suspension, or revocation of ocean transportation intermediary licenses.

* * * * *

§ 501.29 [Removed]

■ 8. Remove § 501.29.

■ 9. Amend § 501.41 as follows:

■ a. Amend paragraph (a) by removing the reference "paragraph (d)" and adding the reference "paragraph (c)" in its place; and

■ b. Revise paragraph (c) to read as follows.

§ 501.41 Public requests for information and decisions.

* * * * *

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

(1) Office of the Secretary;

(2) Office of the General Counsel;

(3) Office of Administrative Law Judges;

(4) Office of Equal Employment Opportunity;

(5) Office of the Inspector General;

(6) Office of Consumer Affairs and Dispute Resolution Services;

(7) Office of the Managing Director;

(i) Office of Budget and Finance;

(ii) Office of Human Resources;

(iii) Office of Information Technology;

(iv) Office of Management Services;

(v) Bureau of Certification and Licensing;

(vi) Bureau of Trade Analysis;

(vii) Bureau of Enforcement; and

(viii) Area Representatives will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters. The addresses of these Area Representatives are as follows. Further information on Area Representatives, including Internet e-mail addresses, can be obtained on the Commission's Web site at *http://www.fmc.gov*.

Houston Area Representative, 650 Sam Houston Parkway, #230, Houston, TX 77060–5908.

Los Angeles Area Representative, P.O. Box 230, 839 South Beacon Street, Room 320, San Pedro, CA 90733–0230.

New Orleans Area Representative, P.O. Box 700, Saint Rose, LA 70087–0700.

New York Area Representative, Building No. 75, Room 205B, JFK International Airport, Jamaica, NY 11430–1827.

Seattle Area Representative, The Fabulich Center, Suite 508, 3600 Port of Tacoma Road, Tacoma, WA 98424–1044.

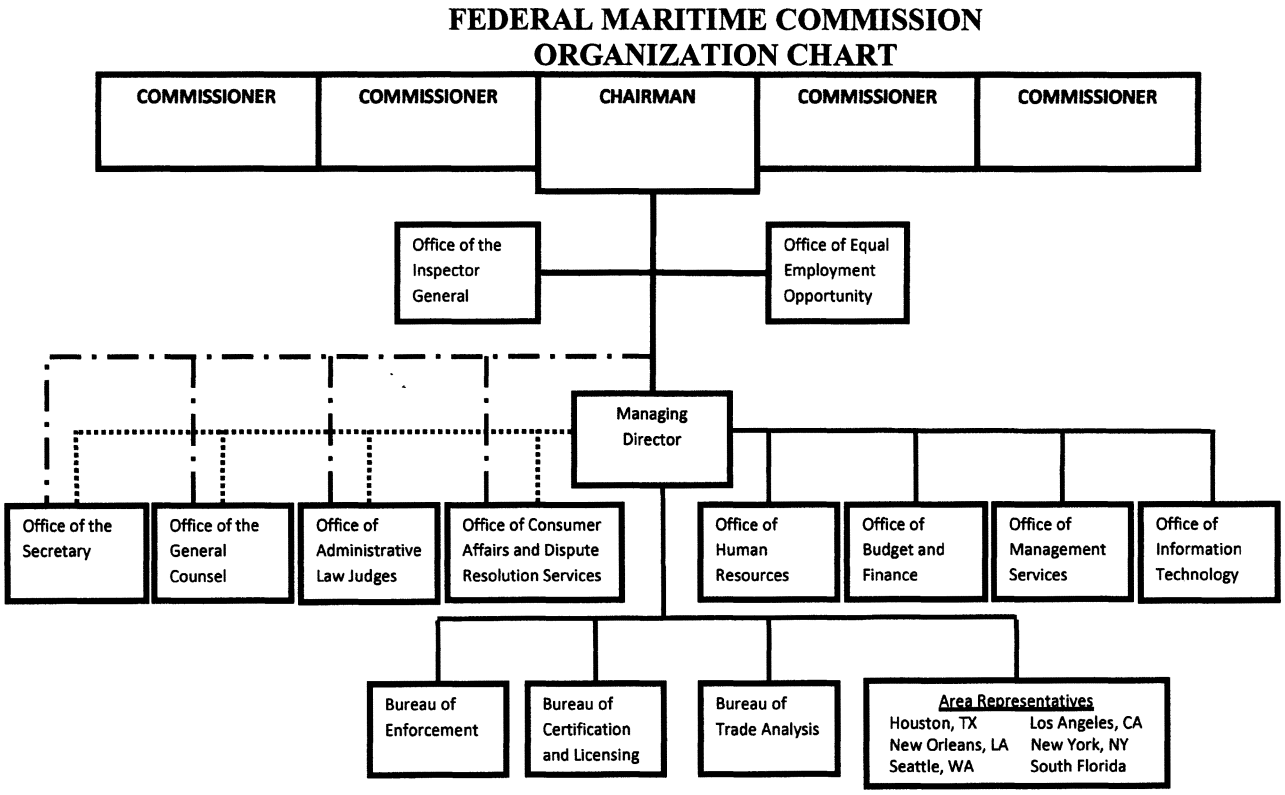
South Florida Area Representative, P.O. Box 813609, Hollywood, FL 33081–3609.

* * * * *

■ 10. Revise Appendix A to Part 501 to read as follows:

Appendix A to Part 501—Federal Maritime Commission Organization Chart

BILLING CODE 6730–01–P



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PART 502—RULES OF PRACTICE AND PROCEDURE

■ 11. The authority citation for Part 502 continues to read as follows:

Authority: 5 U.S.C. 504, 441, 552, 553, 556(c), 559, 561–569, 571–596; 5 U.S.C. 571–584; 12 U.S.C. 1141j(a); 18 U.S.C. 207; 26 U.S.C. 501(c)(3); 28 U.S.C. 2112(a); 31 U.S.C. 9701; 46 U.S.C. 305, 40103–40104, 40304, 40306, 40501–40503, 40701–40706, 41101–41109, 41301–41309, 44101–44106; E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964–1965 Comp. P. 306; 21 U.S.C. 853a.

■ 12. Amend § 502.604 by revising paragraph (b) and (g) to read as follows:

§ 502.604 Compromise of penalties: Relation to assessment proceedings.

* * * * *

(b) *Notice.* When the Commission considers it appropriate to afford an opportunity for the compromise of a civil penalty, it will, except when otherwise authorized by the Commission, or where circumstances render it unnecessary, send a Notice and Demand Letter ("NDL") to the respondent, by registered or certified mail, or by other means reasonably calculated to give notice. The NDL will describe specific violation(s) on which the claim is based, including the particular facts, dates and other elements necessary for the respondent to identify the specific conduct constituting the alleged violation; the amount of the penalty demanded; the availability of alternative dispute resolution, including mediation, through the Commission's Office of Consumer Affairs and Dispute Resolution Services; and the names of Commission personnel with whom the demand may be discussed, if the person desires to compromise the penalty. The NDL also will state the deadlines for the institution and completion of compromise negotiations and the consequences of failure to compromise.

* * * * *

(g) *Delegation of compromise authority.* The Director, Bureau of Enforcement, is delegated authority to issue NDLs and compromise civil penalties as set forth in this subpart, provided, however, that approval of the Managing Director is obtained prior to issuance of each NDL and provided further that compromise agreements shall not be effective unless approved by the Managing Director, whose signature evidencing approval shall appear on compromise agreements, in addition to that of the Director of the Bureau of Enforcement. The Director, Bureau of Enforcement, has the authority to negotiate the terms of compromise agreements.

PART 535—OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984

■ 13. The authority citation for Part 535 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40101–40104, 40301–40307, 40501–40503, 40901–40904, 41101–41109, 41301–41302, and 41305–41307.

§ 535.401 [Amended]

■ 14. In § 535.401, amend paragraph (g) by removing the reference "§ 501.26(e)" and adding the reference "§ 501.27(e)" in its place.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–12592 Filed 5–25–10; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF ENERGY

48 CFR Parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952

RIN 1991–AB88

Acquisition Regulation: Subchapter E—General Contracting Requirements, Subchapter F—Special Categories of Contracting, and Subchapter G—Contract Management

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending the Department of Energy Acquisition Regulation (DEAR) Subchapters E—General Contracting Requirements, F—Special Categories of Contracting, and G—Contract Management to make changes to conform to the FAR, remove out-of-date coverage, and to update references. Today's rule does not alter substantive rights or obligations under current law.

DATES: *Effective Date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Barbara Binney at (202) 287–1340 or by e-mail, *barbara.binney@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Changes are to DEAR parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952. No changes are proposed for DEAR parts 927, 929, 930, 934, 938, 939, 940, 943, 944, 945, 946, 947, and 948. DOE will separately propose rules for changes to parts 927 and 945, respectively.

I. Background

This action updates the existing Department of Energy Acquisition Regulation (DEAR). Subchapters E, F, and G have sections that need to be updated to conform to the FAR. None of the changes are substantive or of a nature to cause any significant expense for DOE or its contractors.

II. Comments and Responses

DOE published a notice of proposed rulemaking on January 7, 2010 (75 FR 964), with a public comment period ending on February 8, 2010. DOE received no comments.

DOE amends the DEAR as follows:

1. Section 932.501–2 is amended to reflect current procedures for unusual progress payments.

2. Subpart 932.6 is amended to update the DEAR to conform with changes to a FAR section title within subpart 32.6 which was revised by Federal Acquisition Circular 2005–027 effective October 18, 2008.

3. Section 935.010 is amended by revising paragraphs (c) and (d). The report submittal process has been changed to electronic submission using the DOE Energy Link System (E–Link) at *http://www.osti.gov/elink*. The contracting officer shall require the contractors to use E–Link to submit a record with each report.

4. Part 936 is amended to redesignate 936.202 as 936.202–70 and change the title of that section to read "specification charges."

5. Part 937 is revised to add a new subpart, Subpart 937.2—Advisory and Assistance Services and section 937.204 Guidelines for determining availability of personnel. Sections 937.204(a), (b), (d), and (e) are added to conform to FAR 37.204 to provide the DOE guidelines for determining availability of sufficient personnel with the requisite training and capabilities to perform the evaluation or analysis of proposals. It also clarifies which DOE officials are responsible for making the determinations prescribed at FAR 37.204 (a), (b), (d), and (e).

6. Section 941.201–70 is amended to update the DOE Order reference by removing the remainder of the sentence after the second "FAR" and adding in its place "part 41 and the Department of Energy (DOE) Order 430.2B, Departmental Energy, Renewable Energy and Transportation Management, or its successor."

7. Section 942.803 is amended at paragraph (c) by removing the reference to 942.70 Audit Services which is no longer a subpart.

8. Section 949.101 is revised to add "Senior" before "Procurement Executive." to conform the use of the Procurement Executive title within the FAR.

9. Subpart 949.5 is removed and reserved. There is no longer a need for a DEAR termination clause for Architect-Engineer contracts.

10. Section 951.102 paragraph (e)(4) is amended to remove the "(iii)" in the paragraph numbering to conform with numbering in the FAR.

11. Section 952.247–70 is amended to remove repetitive language.

12. The rule text is amended as noted in the table at paragraph 16, by removing "FAR" or "FAR part" and replacing it with "48 CFR" or "48 CFR part" and by updating other CFR citations. Section 931.205–47(h)(1) is amended by changing the capitalization of the word "part" in two places. Section 952 has several changes in punctuation at 952.235–71 and 952.250–70.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the United States Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section

3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation for which a general notice or rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). This rule updates references in the DEAR that apply to public contracts and does not impose any additional requirements on small businesses. Today's rule does not alter any substantive rights or obligations and, consequently, today's rule will not have a significant cost or administrative impact on contractors, including small entities. On the basis of the foregoing, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This final rule does not impose a collection of information requirement subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Existing burdens associated with the collection of certain contractor data under the DEAR have been cleared under OMB control number 1910–4100.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the amendments to the DEAR are strictly procedural (categorical exclusion A6). Therefore, today's rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. The Executive Order requires agencies to have an accountability process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a written assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or Tribal governments, or to the private sector, of $100 million or more. This rule does not impose any Federal mandate on State, local or Tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rulemaking or policy that may affect family well-being. This rule will have no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to Office of Information and Regulatory Affairs of the Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

L. Approval by the Office of the Secretary of Energy

Issuance of today's rule has been approved by the Office of the Secretary.

List of Subjects in 48 CFR parts 928, 931, 932, 933, 935, 936, 937, 941, 942, 949, 950, 951, and 952

Government procurement.

Issued in Washington, DC on May 19, 2010.

Patrick M. Ferraro,

Acting Director, Department of Energy.

Joseph F. Waddell,

Acting Director, Office of Acquisition and Supply Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, the Department of Energy amends Chapter 9 of Title 48 of the Code of Federal Regulations as set forth below.

■ 1. The authority citations for parts 928, 931, 932, 933, 935, 936, 941, and 942, continue to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 932—CONTRACT FINANCING

■ 2. Section 932.501–2 is amended by revising paragraph (a)(3) to read as follows:

932.501–2 Unusual progress payments.

(a)(3) For DOE, the Head of the Contracting Activity shall forward all requests which are considered favorable, with supporting information, to the DOE Senior Procurement Executive, who, after coordination with the Chief Financial Officer, Headquarters, will approve or deny the request. For NNSA, the NNSA Senior Procurement Executive will coordinate with the NNSA Chief Financial Officer before approving or denying the request.

* * * * *

932.605 [Redesignated as 932.602]

■ 3. Section 932.605 is redesignated as 932.602 and newly redesignated 932.602 is amended by:

■ a. Revising the section heading as set forth below; and

■ b. Removing the paragraph designation "(b)".

■ The revision reads as follows:

932.602 Responsibilities.

* * * * *

PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

■ 4. Revise section 935.010 to read as follows:

935.010 Scientific and technical reports.

(c) All research and development contracts which require reporting of research and development results conveyed in scientific and technical information (STI) shall include an instruction requiring the contractor to submit all STI, including reports and notices relating thereto, electronically to the U.S. Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System (E-link) at *http://www.osti.gov/elink.* The phrase "reports and notices relating thereto" does not include reports or notices concerning administrative matters such as contract cost or financial data and information. The DOE Order 241.1B Scientific and Technical Information Management, or its successor version, sets forth requirements for STI management.

(d) As prescribed in DOE Order 241.1B, the contracting officer shall ensure that the requirements of the attendant Contractor Requirements Document are included in applicable contracts.

PART 936—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 5. Section 936.202 is redesignated as 936.202–70 and the section heading is revised to read as follows:

936.202–70 Specifications charges.

* * * * *

■ 6. The authority citation for parts 937 and 949 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

PART 937—SERVICE CONTRACTING

■ 7. Add a new subpart 937.2, consisting of section 937.204, to read as follows:

Subpart 937.2—Advisory and Assistance Services

937.204 Guidelines for determining availability of personnel.

(a) The determination, that there is sufficient DOE personnel with the requisite training and capabilities for each evaluation or analysis of proposals, shall be determined in accordance with 915.207–70(f)(2)(i).

(b) If it is determined that there is no such DOE personnel available, then other Federal agencies may have the required personnel with the requisite training and capabilities for the evaluation or the analysis of proposals. The determination, to use employees of other Federal agencies for the evaluation or analysis of proposals, shall be in accordance with 915.207–70(f)(2)(ii).

(d) The determination, to employ non-Federal evaluators or advisors, shall be determined in accordance with 915.207–70(f)(3).

(e) The determination that covered personnel are unavailable for a class of proposals, necessitating employment of non-Federal evaluators or advisors, shall be determined in accordance with 915.207–70(f)(3).

PART 941—ACQUISITION OF UTILITY SERVICES

■ 8. Section 941.201–70 is revised to read as follows:

941.201–70 DOE Directives.

Utility services (defined at 48 CFR 41.101) shall be acquired in accordance with 48 CFR part 41 and the Department of Energy (DOE) Order 430.2B, Departmental Energy, Renewable Energy and Transportation Management, or its successor.

PART 942—CONTRACT ADMINISTRATION

942.803 [Amended]

■ 9. Amend section 942.803 in the last sentence of paragraph (c)(1) by removing the phrase ", as discussed in 942.70 Audit Services".

PART 949—TERMINATION OF CONTRACTS

949.101 [Amended]

■ 10. Section 949.101 is amended by adding "Senior" before "Procurement Executive".

Subpart 949.5 [Removed and Reserved]

■ 11. Subpart 949.5, consisting of section 949.501 and 949.505, is removed and reserved.

PART 950—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

■ 12. The authority citation for part 950 continues to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

PART 951—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 13. The authority citation for part 951 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq.* and 50 U.S.C. 2401 *et seq.*

951.102 [Amended]

■ 14. Section 951.102 is amended by revising the paragraph designation "(e)(4)(iii)" to read "(e)(4)".

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. The authority citation for part 952 is revised to read as follows:

Authority: 42 U.S.C. 2201; 2282a; 2282b; 2282c; 42 U.S.C. 7101 *et seq.;* 50 U.S.C. 2401 *et seq.*

■ 16. Section 952.247–70 is amended by:

■ a. Revising the date of the clause to read as set forth below; and

■ b. Removing "or its successor Official Foreign Travel, or any subsequent version of the order" in the clause and adding in its place "Official Foreign Travel, or its successor".

The revision reads as follows:

952.247–70 Foreign travel.

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PARTS 928, 931, 932, 933, 936, 937, 941, 942, 950, 951, and 952 [AMENDED]

■ 17. In the table below, for each section indicated in the left column, remove the word indicated in the middle column from where it appears in the section, and add the word in the right column:

Section	Remove	Add
928.101–1	"FAR"	"48 CFR"
928.301	"FAR Part"	"48 CFR part"
931.102 in 2 places	"FAR"	"48 CFR"
931.102	"FAR Part 31"	"48 CFR part 31"
931.205–32(a)	"FAR"	"48 CFR"
931.205–47(h)(1), in the Employee whistleblower action definition	"29 CFR Part 24,"	"29 CFR part 24,"
931.205–47(h)(1), in the Employee whistleblower action definition	"10 CFR Part 708"	"10 CFR part 708"
932.006–4(a)	"FAR"	"48 CFR"
932.803(d)	"FAR"	"48 CFR"
932.7004–1 in 3 places	"FAR"	"48 CFR"
932.7004–3(a)	"FAR"	"48 CFR"
933.103(k)	"FAR"	"48 CFR"
933.104(b)	"FAR"	"48 CFR"
933.104(c)	"FAR"	"48 CFR"
933.104(g)	"FAR"	"48 CFR"
933.106(a)	"FAR"	"48 CFR"
936.602–70(a)(8)	"FAR"	"48 CFR"
936.609–3	"FAR"	"48 CFR"
936.7100	"FAR Part"	"48 CFR part"
937.7040	"FAR"	"48 CFR"
942.704(b) in 2 places	"FAR"	"48 CFR"
942.705–1(b)(1)	"FAR"	"48 CFR"
950.7003(a) in the first sentence	"(DOE)"	"DOE"
951.102(a)	"FAR Part"	"48 CFR part"
951.102(a)	"DOE PMR 41 CFR 109–26"	"DOE PMR 41 CFR 109"
952.233–2 in the introductory text	"FAR"	"48 CFR"
952.233–4(a)	"FAR"	"48 CFR"
952.233–4(b)	"FAR"	"48 CFR"
952.235–71(b)(1)	"warranted;"	"warranted."
952.250–70(e)(2)	"which:"	"which—"

[FR Doc. 2010–12520 Filed 5–25–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 0910051338–0167–03]

RIN 0648–AY29

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Revisions to Framework Adjustment 44 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements: Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2010

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; adjustment to specifications.

SUMMARY: Based on finalized Northeast (NE) multispecies sector rosters submitted on April 30, 2010, NMFS announces adjustments to the NE multispecies fishing year (FY) 2010 specification of annual catch limits (ACLs) for common pool vessels (common pool sub-ACLs), ACLs for sector vessels (sector sub-ACLs), and sector Annual Catch Entitlements (ACEs) for each of the 20 groundfish stocks managed under the NE Multispecies Fishery Management Plan (FMP). This revision to catch levels is necessary because some vessel owners have chosen to drop out of sectors and fish in the common pool for FY 2010.

DATES: Effective May 21, 2010 through April 30, 2011.

FOR FURTHER INFORMATION CONTACT: Travis Ford, Fishery Management Specialist, (978) 281–9233.

SUPPLEMENTARY INFORMATION: Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act and Amendment 16 to the FMP (75 FR 18262; April 9, 2010), Framework Adjustment 44 (FW 44) to the FMP, which was published in the **Federal Register** on April 9, 2010 (75 FR 18356), specified catch levels for 20 NE groundfish stocks for FY 2010–2012. Catch levels were specified for various components of the groundfish fishery, including sub-ACLs for the common pool and sectors. These sub-ACLs were set based on the catch history of the vessels enrolled in sectors, as of January 22, 2010. A final sector rule that also published on April 9, 2010, (75 FR 18113; sector rule), approved sector operation plans and allocated ACE to sectors for FY 2010. The sector rule included FY 2010 sector sub-ACL information also reflected in FW 44, where the sum of the ACEs for each sector equals the sector sub-ACL. To provide increased flexibility to the fishing industry, NMFS allowed vessels that were initially enrolled in sectors for FY 2010 to drop out and join the common pool through April 30, 2010. Because the sector ACEs, as well as the sector sub-ACLs (sum of ACEs for all sectors) and the common pool sub-ACL (groundfish sub-ACL minus sector sub-ACL), are based upon the specific membership of sectors, the change in membership between January 22, 2010, and May 1, 2010, requires that the sector ACEs, and sub-ACLs for the common pool and sectors, be revised. Based on the April 30, 2010, finalized sector rosters, this rule adjusts the FY 2010 sector ACEs and sub-ACLs for common pool and sectors.

The preamble of the final rule implementing FW 44 informed the public that "NMFS intends to publish a rule in early May 2010 to modify the common pool and sector sub-ACLs and notify the public, if these numbers change." Through this temporary final rule, NMFS is specifying revised ACEs for all approved sectors, and revised sub-ACLs for common pool and sector vessels based on the finalized sector rosters. The final number of vessels electing to fish in sectors for FY 2010 is 762 (reduced by 50 vessels since the January 22, 2010 roster). All ACE and sub-ACL values for sectors assume that each sector MRI has a valid permit for FY 2010.

Tables 1, 2, and 3 contain the amount of ACE for each sector and stock, as a percentage and absolute amount (in metric tons and pounds), based on the final rosters.

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Table 1. Percentage (%) of ACE Each Sector Will Receive by Stock For FY 2010 *

Sector Name (Defined Below)	Moratorium Right Identifier (MRI) Count	Georges Bank (GB) Cod	Gulf of Maine (GOM) Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	Southern New England (SNE) / Massachusetts (MA) Yellowtail Flounder	Cape Cod (CC)/GOM Yellowtail Flounder	American plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	94	28	2	6	1	0	0	2	1	1	0	2	3	6	8
NCCS	18	0	0	0	0	1	1	0	0	0	0	0	0	1	0
NEFS 2	77	5	19	12	18	2	2	19	8	13	2	20	17	6	12
NEFS 3	72	1	16	0	11	0	0	8	4	3	0	10	1	5	7
NEFS 4	46	5	9	5	7	2	3	7	9	9	1	8	6	8	6
NEFS 5	37	3	0	5	1	10	27	2	2	3	3	1	0	0	0
NEFS 6	17	2	2	3	3	1	5	2	3	4	1	3	5	4	3
NEFS 7	26	6	1	5	1	16	4	5	4	4	17	3	0	1	1
NEFS 8	22	7	0	7	0	16	6	7	2	3	21	3	0	1	1
NEFS 9	51	12	2	10	5	19	7	10	8	8	34	3	6	4	4
NEFS 10	40	1	5	0	3	0	0	12	2	3	0	16	1	1	1
NEFS 11	48	0	14	0	3	0	0	2	2	2	0	2	2	5	9
NEFS 12	7	0	1	0	0	0	0	0	0	0	0	0	0	0	0
NEFS 13	31	8	1	14	1	15	11	3	3	5	11	1	5	2	2
PCCGS	41	0	5	0	2	0	1	1	6	4	0	2	3	5	4
SHS	116	17	18	30	41	8	9	11	40	34	8	7	49	51	38
TSS	19	1	1	1	1	7	1	2	1	1	2	2	0	0	0

*All ACE values for sectors outlined in Table 1 assume that each sector MRI has a valid permit for FY 2010.
-Georges Bank Cod Fixed Gear Sector (FGS), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), Port Clyde Community Groundfish Sector (PCCGS), Sustainable Harvest Sector (SHS), and Tri-State Sector (TSS)

Table 2. ACE Each Sector Will Receive by Stock for FY 2010 * (mt)

Sector Name	MRI Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	American plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	94	95	866	87	768	1822	11	0	1	14	16	7	0	4	198	150	214
NCCS	18	1	5	21	14	34	2	8	2	3	4	2	1	0	30	22	12
NEFS 2	77	18	165	870	1394	3308	146	16	5	149	235	112	31	31	1131	157	338
NEFS 3	72	3	29	726	19	46	89	0	0	64	122	25	0	16	100	129	202
NEFS 4	46	16	146	394	650	1543	55	21	8	56	263	79	13	12	442	202	155
NEFS 5	37	9	87	10	637	1511	6	92	82	12	59	21	47	1	28	9	11
NEFS 6	17	6	58	77	321	761	24	13	15	16	97	36	16	5	356	93	88
NEFS 7	26	20	186	28	630	1495	6	156	13	38	114	35	315	5	34	20	21
NEFS 8	22	25	228	21	792	1881	2	154	18	57	69	27	382	5	30	13	18
NEFS 9	51	42	386	76	1237	2936	39	183	22	75	215	65	623	4	396	104	105
NEFS 10	40	3	29	233	31	74	23	0	1	91	49	25	0	26	39	24	40
NEFS 11	48	1	12	624	4	11	26	0	0	17	53	16	0	3	128	123	255
NEFS 12	7	0	0	58	0	0	1	0	0	4	10	2	0	1	5	1	1
NEFS 13	31	25	233	32	1686	4002	5	149	33	24	97	38	200	2	309	45	61
PCCGS	41	1	6	215	6	14	19	0	2	8	181	38	0	3	175	117	117
SHS	116	56	516	817	3548	8421	340	79	29	85	1132	289	157	11	3354	1292	1047
TSS	19	3	26	40	175	416	5	70	4	17	33	11	36	3	1	3	2

*All ACE values for sectors outlined in Table 2 assume that each sector MRI has a valid permit for FY 2010.

Table 3. ACE Each Sector Will Receive by Stock for FY 2010 * (1,000 lbs)

Sector Name	MRI Count	GB Cod-East	GB Cod-West	GOM Cod	GB Haddock-East	GB Haddock-West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	American plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	94	209	1909	191	1693	4017	23	0	1	31	35	15	1	8	436	332	472
NCCS	18	1	11	46	32	76	4	18	4	7	9	4	3	1	67	49	27
NEFS 2	77	40	363	1917	3072	7292	322	36	11	328	517	248	69	68	2494	345	745
NEFS 3	72	7	65	1601	42	101	197	1	0	142	269	56	1	35	219	285	446
NEFS 4	46	35	321	868	1433	3401	122	46	18	123	579	174	29	26	974	446	342
NEFS 5	36	21	188	23	1404	3332	12	203	181	27	130	47	104	2	62	20	25
NEFS 6	17	14	128	170	707	1678	54	28	33	35	213	78	34	11	785	206	194
NEFS 7	26	45	410	61	1389	3296	13	343	28	83	252	76	695	11	74	43	45
NEFS 8	22	55	502	47	1747	4146	4	339	41	125	153	59	842	12	66	29	39
NEFS 9	51	93	851	168	2727	6472	86	403	49	165	473	143	1374	9	873	229	231
NEFS 10	40	7	64	513	68	162	50	0	1	201	109	55	0	57	86	52	87
NEFS 11	48	3	27	1375	10	23	58	0	0	38	117	35	0	7	283	272	561
NEFS 12	7	0	1	127	0	0	2	0	0	8	23	5	0	1	10	2	3
NEFS 13	31	56	513	70	3717	8822	11	328	72	53	214	85	441	5	682	99	133
PCCGS	41	2	14	474	13	30	42	0	5	17	399	83	0	7	385	258	259
SHS	116	124	1137	1802	7822	18565	750	175	64	187	2495	637	345	25	7395	2849	2309
TSS	19	6	58	88	387	918	12	154	8	38	73	24	79	8	2	7	3

*All ACE values for sectors outlined in Table 3 assume that each sector MRI has a valid permit for FY 2010.

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Table 4 compares the preliminary FY 2010 sub-ACLs for common pool and sector vessels from FW 44, with the

current revised sub-ACLs based on the final sector rosters.

TABLE 4—TOTAL ACLS, SUB-ACLS, AND ACL-SUBCOMPONENTS FOR FY 2010 (MT) *

Stock	Groundfish total	Preliminary common pool sub-ACL	Preliminary sector sub-ACL	Revised common pool sub-ACL	Revised sector sub-ACL
GB cod	3,430	103	3,327	128	3,302
GOM cod	**7,240	178	4,389	240	4,327
GB haddock	40,440	202	40,238	254	40,186
GOM haddock	**1,149	13	812	26	799
GB yellowtail flounder	964	21	943	23	941
SNE/MA yellowtail flounder	310	63	247	75	235
CC/GOM yellowtail flounder	779	31	748	50	729
American plaice	2,848	71	2,777	100	2,748
Witch flounder	852	19	833	25	827
GB winter flounder	1,852	26	1,826	29	1,823
GOM winter flounder	†158	20	138	25	133
SNE winter flounder	520	520	0	520	0
Redfish	†6,846	62	6,786	90	6,756
White hake	†2,556	44	2,522	51	2,505
Pollock	2,748	47	2,701	62	2,686
N. window	110	110	0	110	0
S. window	154	154	0	154	0
Ocean pout	239	239	0	239	0
Halibut	30	30	0	30	0
Wolffish	73	73	0	73	0

* All sub-ACL values for sectors outlined in Table 4 assume that each sector MRI has a valid permit for FY 2010.
** This contains the recreational sub-ACL as specified in FW 44 (75 FR 18356; April 9, 2010).
† Changed from FW 44 Final Rule due to minor differences in calculations.

The sub-ACLs for individual groundfish stocks have changed from between 0 mt and 62 mt. The sub-ACLs for stocks in sectors have decreased between 0.18% and 4.99%, with GOM cod having the largest actual decrease of 62 mt (1.4%) and SNE/MA yellowtail flounder having the greatest percentage decrease of 4.99% (12 mt). The sub-ACLs for stocks in the common pool have increased between 11% and 101%, with CC/GOM yellowtail flounder and GOM haddock having the greatest increases of 60% and 101%, respectively. Other notable increases include: GOM cod increasing 35% (62 mt) and redfish increasing by 45% (28 mt).

FW 44 specifies incidental catch TACs applicable to the NE multispecies Special Management Programs for FY 2010–2012, based on the ACLs, the FMP, and advice from the Council. Incidental catch TACs are specified for certain stocks of concern for common pool vessels fishing in the Special Management Programs, in order to limit the amount of catch of stocks of concern that can be caught under such programs. Since these incidental catch TACs are based on the sub-ACLs for the common pool, they have changed based on the revised sub-ACLs. The incidental catch TACs were based upon the council's September 2009 Environmental Assessment and were not revised based on the January 2010 roster, so they are decreasing when compared with those of the April 9 final rule.

TABLE 5—INCIDENTAL CATCH TACS BY STOCK FOR FY 2010–2010 (MT)

Stock	Percentage of sub-ACL	Final rule 2010 incidental catch TAC	Revised 2010 incidental catch TAC
GB cod	2	3.5	2.55
GOM cod	1	3.4	2.40
GB yellowtail flounder	2	0.4	0.47
CC/GOM yellowtail flounder	1	0.5	0.50
SNE/MA yellowtail flounder	1	0.6	0.75
American plaice	5	9.2	5.00
Witch flounder	5	2.1	1.23
SNE/MA winter flounder	1	5.2	5.20
GB winter flounder	2	1.1	0.58
White hake	2	2.4	1.02
Pollock	2	2.4	1.24

TABLE 6–INCIDENTAL CATCH TACS FOR SPECIAL MANAGEMENT PROGRAMS BY STOCK FOR FY 2010—2012 (MT)

Stock	Regular B DAS program		Closed area I hook gear haddock SAP		Eastern U.S./Canada haddock SAP	
	Final rule 2010	Revised 2010	Final rule 2010	Revised 2010	Final rule 2010	Revised 2010
GB cod	1.75	1.28	1.75	1.28	0	0
GOM cod	3.4	2.40	.....	.....	.....	.....
GB yellowtail flounder	0.4	0.47	.....	.....	0	0
CC/GOM yellowtail flounder	0.5	0.50	.....	.....	.....	.....
SNE/MA yellowtail flounder	0.9	0.75	.....	.....	.....	.....
American plaice	9.2	5.00	.....	.....	.....	.....
Witch flounder	2.1	1.23	.....	.....	.....	.....
SNE/MA winter flounder	1.1	5.20	.....	.....	.....	.....
GB winter flounder	1.1	0.58	.....	.....	0	0
White hake	5.2	1.02	.....	.....	.....	.....
Pollock	2.0	1.04	0.4	0.2	0	0

Classification

NMFS has determined that this action is consistent with the FMP, the Magnuson-Stevens Act and other applicable law.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment, as well as the delayed effectiveness for this action, because notice, comment, and a delayed effectiveness would be impractical and contrary to the public interest. If the sector ACEs and sub-ACLs are not adjusted immediately, the time period during which the fishery will be operating under incorrect catch specifications will be prolonged. Specifically, the common pool would be allocated insufficient fish, and vessels fishing in sectors would be allocated excessive fish.

The implications of delaying the date on which the specifications are corrected depends upon the size of the ACE and sub-ACL, the size of the change in specification relative to the ACE and sub-ACL, and the rate of catch of the particular stock. If, for example, a sector were catching a particular stock at a high rate, and one for which they have a small ACE, and this rule makes a substantial change to the sector's ACE for that stock, a significant fraction of the ACE could be harvested between the start of the May 1, 2010 FY, and the date the ACE is adjusted downward. The catch associated with vessels fishing in sectors could be excessive, and the catch associated with vessels fishing in the common pool may be unnecessarily constrained. In the worst case scenario, excessive catch by sectors could lead to a sector catching more than its ACE for the FY. Constrained catch could cause negative economic impacts to the common pool.

Further, a longer period of time between the start of the May 1, 2010 FY and the time of ACL adjustment would increase the uncertainty in the fishery, and could cause disruption to the fishing industry when the sub-ACLs are adjusted, especially for stocks where the sub-ACLs are very low relative to historic catch levels. Vessel owners and crews, and businesses dependent upon the groundfish fishery, are already experiencing considerable uncertainty, given the implementation of multiple new management elements in the fishery (*e.g.,* many sectors, restrictive ACLs, and additional fishing effort reductions) that became effective May 1, 2010. Additional sources of uncertainty, therefore, should be minimized where possible. Fishermen may make business decisions based on the ACLs in a given sector or the common pool; thus, it is important to implement adjusted ACEs and sub-ACLs as soon as possible. FW 44, which was open to public comment, notified the public that modification to sub-ACLs for the common pool and sectors would be likely based on the expectation that sector rosters would change (be reduced).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 19, 2010.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 2010–12657 Filed 5–21–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 101
Wednesday, May 26, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1028; Directorate Identifier 2009–NM–188–AD]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Model Gulfstream G150 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD) for certain Model Gulfstream G150 airplanes. The proposed AD would have required inspecting to determine the manufacturer of the baggage compartment rubber seals, and replacing the baggage compartment rubber seals manufactured by Gumiyan with seals manufactured by Rubbercraft. Since the proposed AD was issued, we have received new data from the manufacturer stating that all affected airplanes have already been modified as described in the proposed AD. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with a notice of proposed rulemaking (NPRM) for a new AD for certain Model Gulfstream G150 airplanes. That NPRM was published in the **Federal Register** on November 5, 2009 (74 FR 57266). The NPRM would have required inspecting to determine the manufacturer of the baggage compartment rubber seals, and replacing the baggage compartment rubber seals manufactured by Gumiyan with seals manufactured by Rubbercraft. The NPRM resulted from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI described the unsafe condition as:

> IAI Company Flammability tests revealed that the baggage compartment rubber seals manufactured by Gumiyan are not compliant with FAR [Federal Aviation Regulation] 25, Appendix F, Part I requirements.

The proposed actions were intended to prevent potential ignition of the baggage compartment rubber seals, which could lead to a larger fire.

Actions Since NPRM Was Issued

Since we issued the NPRM, Gulfstream Aerospace LP has informed the FAA that all Model Gulfstream G150 airplanes have been modified in accordance with Gulfstream Service Bulletin 150–25–055, dated October 28, 2008 (specified as the appropriate source of service information for accomplishing the requirements of the proposed AD). Gulfstream Aerospace LP states that, consequently, all actions specified in the NPRM are complete.

FAA's Conclusions

Upon further consideration, we have determined that the proposed AD is not necessary. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2009–1028, Directorate Identifier 2009–NM–188–AD, which was published in the **Federal Register** on November 5, 2009 (74 FR 57266).

Issued in Renton, Washington, on May 14, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–12673 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No.: FAA–2010–0289; SFAR No. 110]

RIN 2120–AJ69

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action would permit certain U.S. civil aircraft operations below flight level (FL) 160 within the territory and airspace of Afghanistan, when approved by the FAA as provided herein. Otherwise, flight operations below FL 160 would be prohibited within the territory and airspace of Afghanistan by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of a U.S. airman certificate, except when that person is operating a U.S.-registered

aircraft for a foreign air carrier; and operators of U.S.-registered aircraft, except when such operators are foreign air carriers. The FAA finds this action necessary to prevent a potential hazard to persons and aircraft engaged in such flight operations.

DATES: Send your comments on or before June 10, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0289, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions about this proposed rule, contact Aviation Safety Inspectors David Catey or David Morton, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; respective telephone numbers are (202) 267–3732 and (202) 493–5580.

For legal questions, contact Lorelei Peter, Office of the Chief Counsel, AGC–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3134.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and U.S. operations throughout the world. Also, the FAA is responsible for issuing rules affecting the safety of air commerce and national security. The FAA's authority to issue the rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106(g), describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the United States Government under international agreements. Further, the FAA has broad authority under section 44701(a)(5) to prescribe regulations governing the practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security.

Background

Statement of the Problem

Insurgent activity in Afghanistan has increased and threatens the safety of U.S. civil aircraft operating within Afghan airspace and overflying the territory of Afghanistan. This insurgent activity has adversely affected the safety of airfield operation for these flights. The Afghan insurgents, armed with various weapons, pose a serious threat to U.S. civil aircraft at local airports and to these aircraft on approach to and departing from these airports. Insurgents with small arms fire capabilities have been targeting airfields with rockets and have fired on aircraft at these airfields. While U.S. civil aircraft have not yet specifically been targeted, there have been several reported events of these aircraft being hit by small arms fire. Also, foreign civil aircraft that support the North Atlantic Treaty Organization (NATO) have been shot down by small arms and rocket-propelled grenade fire.

General Summary of Proposal

In view of the threat escalation in the territory and airspace of Afghanistan, and in furtherance of the FAA Administrator's responsibilities to promote the safe flight of U.S. civil aircraft in air commerce and to issue aviation rules in the interest of national security of the United States, the Administrator has determined that the potential hazard to U.S-registered aircraft and U.S.-certificated airman must be mitigated. Therefore, the FAA proposes to issue an SFAR to restrict flight below FL 160 within the airspace and territory of Afghanistan, except in compliance with the procedures set forth in this rule.

Notice and Comment

The situation in Afghanistan presents a unique environment relative to other situations when the FAA has imposed regulations addressing the safety of U.S. certificated operators and airmen and U.S. registered aircraft operating in foreign territories and airspace. The presence of the U.S. military forces in Afghanistan has required a large presence of U.S. civilian aircraft operations to support the warfighting, nation-building, and humanitarian efforts. The level of these operations occurring in Afghanistan warrant the FAA to provide notice of the proposed regulations to limit flight in this area and a limited opportunity for comment from operators or individuals that may be affected by this action. The FAA advises that pursuing this course of action with respect to the above flights being conducted in Afghanistan does not alter in any manner, the agency's authority or ability to impose immediate restrictions on the above operations if the safety of these operations cannot be ensured or for other environments for which such regulations may be appropriate.

For the reasons stated, the FAA finds that good cause exists to limit the notice and public comment period required by 5 U.S.C. 553(d)(3) to 15 days.

Discussion of the Proposed Regulatory Requirements

Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

Unless specifically approved by the FAA as described below, SFAR 110 would prohibit all flight operations within the territory and airspace of Afghanistan below FL 160 by U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, unless such person is operating a U.S.-registered aircraft for a foreign air carrier; and operators of a U.S.-registered aircraft, unless the operation is for a foreign air carrier. This SFAR is necessary to mitigate an undue hazard to affected aircraft and to protect persons and property onboard those aircraft. This SFAR would remain in effect for 5 years from the effective date of the SFAR. The FAA would retain the right to amend, rescind, or extend the SFAR as necessary. The FAA would continue to monitor the threat level and review the SFAR as required and as part of the overall U.S. strategy for Afghanistan.

Approval Based on Authorization Request of an Agency of the United States Government

If a department or agency of the U.S. Government determines that it has a critical need to engage any person covered under paragraph 1 of proposed SFAR 110, including a U.S. air carrier or a U.S. commercial operator in a charter for transportation of civilian or military passengers or cargo where the total capacity of the aircraft is used solely for that charter while the aircraft operates within Afghanistan, the U.S. Government department or agency may request FAA approval of the operation for the person covered under paragraph 1 (Applicability) of the proposed rule.

Such an approval request would have to be made in writing by a letter signed by an appropriate senior official of the requesting department or agency of the U.S. Government; and the letter must be sent to the Associate Administrator for Aviation Safety (AVS–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. An appropriate senior official is someone with final authority for approving that U.S. Government department or agency's Safety Risk Analysis Plan (SRAP), described in item 2 below. A single letter may request approval from the FAA for multiple persons covered under paragraph 1 (Applicability) of proposed SFAR 110. The letter would have to identify the person covered under the SFAR on whose behalf the U.S. Government department or agency is seeking FAA approval, and it must describe—

- The proposed operations, including the nature of the mission being supported;
- The service provided by the person covered by the SFAR;
- The specific locations within Afghanistan where the proposed operations will be conducted; and
- Whether the proposed operations involve a landing at a point other than the point of departure.

The request for approval would also have to include the following documents and information:

(1) A copy of the written contract between the U.S. Government department or agency requesting FAA approval and persons covered under paragraph 1 (Applicability) of proposed SFAR 110 for specific flight operations, which includes terms and conditions detailing how such flight operations are to be conducted.

(2) A Safety Risk Analysis Plan (SRAP), approved by an appropriate senior official of the U.S. Government department or agency, describing how, in view of the threat facing U.S. civil aviation in Afghanistan, the risks to the safety of the operation will be managed. The FAA's review of the SRAP shall not constitute FAA approval of the plan, in that it is not an FAA determination that the SRAP adequately manages the risk presented. Different kinds of operations or different operating locations may require different risk management strategies and, thus, the need for a U.S. Government department or agency to submit multiple SRAPs to address different operating conditions. The minimum safety considerations that must be specifically addressed in the SRAP include, but are not limited to—

- Thorough descriptions of access to and the use of intelligence;
- Operational security (OPSEC), including handling, storage, and transmission of information related to proposed operations;
- The manner of operational control of the aircraft by the operator;
- Mission planning and briefing, including how the management of risks related to insurgent activity is incorporated into mission planning for all stages of the operation;
- Ground security;
- In-flight security;
- Communications, including those between the operator and the aircraft and with the contracting U.S. Government department or agency before, during, and after flight operations;
- Equipment, including a description of the aircraft and any special equipment to be used by the airmen;
- Whether and how training by the operator to flight and ground crew members and other operational personnel who will be involved in the proposed operations will be conducted;
- Reporting and feedback procedures of the operator to report threats to the FAA; and
- Any additional risk analysis and management measures deemed necessary.

(3) Any other information requested by the FAA.

If an approval request includes classified information, you may contact Aviation Safety Inspectors David Catey or David Morton for instructions on submitting it to the FAA. Their contact information is listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed SFAR.

The FAA would review the request for approval submitted by the U.S. Government department or agency for sufficiency in addressing the aviation safety considerations relative to the risks to the proposed operations. If the FAA determines that the U.S. Government department or agency has sufficiently addressed those safety considerations, an approval may be issued as described under the Approval Conditions discussion that follows. FAA approval of the operation under proposed paragraph 4 of SFAR 110 does not relieve the operator of its responsibility to comply with all FAA rules and regulations, as well as all rules and regulations of other U.S. Government departments or agencies that may apply to the operation, including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Proposed Approval Conditions

If the FAA approves the requested operation, the FAA's Aviation Safety Organization (AVS) would issue an approval directly to the carrier by Operations Specifications (large air carriers) or a letter of authorization (general aviation operations). AVS would send a letter to the authorizing agency to indicate the extent to which the FAA approves the proposed operations. The letter would stipulate the specific conditions under which the FAA approves the air carrier or other covered person for the requested operations in Afghanistan. Specifically:

(1) Any approval would stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator while still allowing the operator to achieve its operational objectives;

(2) Any approval would specify that the operation is not eligible for coverage by a premium war risk insurance policy issued by the FAA under section 44302 of chapter 443 of Title 49 of the United States Code. A request for such coverage would not be granted;

(3) If the operator is already covered by a premium war risk insurance policy issued by the FAA,[1] the applicant would be required to request the FAA to issue an endorsement to its premium war risk insurance policy that specifically excludes coverage for any operations below FL 160 in the territory and airspace of Afghanistan, including a flight plan that contemplates landing in or taking off from Afghan territory. If approved by the FAA, such an endorsement to the premium war risk insurance policy would have to be issued and effective before the effective date of the approval. Additionally, and before any approval is issued, the operator would have to submit to the FAA in writing its agreement to waive all claims and liabilities against the U.S. Government with respect to any third-party claims and liabilities relating to any event arising from or related to the approved operation. Such waiver and indemnification agreement would also be required as a condition of any exemption issued under paragraph 3 of proposed SFAR 110.

(4) If the operation includes the carriage of civilian passengers, the operator would have to obtain signed statements from each passenger that the passenger knowingly accepts the risk of the operation and consents to that risk; and

(5) Other conditions as determined by the FAA.

The FAA may impose additional conditions on operators through their Operations Specifications or letters of authorization that are not contained in letters notifying requesting departments or agencies of approvals.

Exemption

Persons covered under paragraph 1 (Applicability) of proposed SFAR 110 who are performing operations for entities other than U.S. Government agencies may seek an exemption under paragraph 3 in accordance with the procedures set forth in 14 CFR part 11. In petitioning for an exemption, the petition would have to show that its intended operation is in the public interest. For these operations, the operator would have to (1) submit a letter from a U.S. Government agency supporting the proposed operations as being in the public interest; and (2) provide information to demonstrate that the operator can establish a comparable level of safety, which at a minimum, meets the criteria of the SRAP described above. Unless both conditions are met, an exemption permitting such operations will not be granted.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan.

Summary: This action would permit certain U.S. civil aircraft operations below flight level (FL) 160 within the territory and airspace of Afghanistan, when approved by the FAA.

Use of: If air carrier operators are covered by a premium war risk insurance policy issued by the FAA, they would be required to issue an endorsement to their premium war risk insurance policy that specifically excludes coverage for any operations below FL 160 in the territory and airspace of Afghanistan. The FAA would also require the affected operators to submit documentation to FAA showing that the endorsement to the premium war risk insurance policy is in effect before being issued operations specifications authorizing such operations.

Additionally, and before any authorization (operation specifications or letter of authorization) is issued, the operator would have to submit to the FAA in writing its agreement to waive all claims and liabilities against the U.S. Government with respect to any third-party claims and liabilities relating to any event arising from or related to the approved operation.

Respondents (including number of): The FAA estimates that there would be 25 affected operators.

Frequency: The information collection would occur one time during the first year the rule is in affect.

Annual Burden Estimate: The burden estimate is $2,350.

The proposed rule would require two information collections from regulated entities. We expect that 25 entities would fill out paperwork with policy endorsements and they would submit the liability waiver and indemnification agreement. The required documentation for the affected entities to be in compliance with this proposed rule would take each operator 1 hour to fill out, endorse and file the required paperwork. As such, the cost for a one-year period would be $2,350 (1 hour × 25 applicants × $94 per hour).

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by June 10, 2010, and should direct them to the address listed in the **ADDRESSES** section at the end of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register,** after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA

[1] Coverage under FAA premium war risk insurance policies is suspended, as a condition of the premium war risk policy, if an operation is covered by non-premium war risk insurance through a contract with an agency of the U.S. Government under section 44305 of chapter 443 of Title 49 of the U.S. Code.

has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

IV. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows: This proposed SFAR requires the submission of a request to conduct an operation in a hazardous airspace. Such a request involves the submission of paperwork which is viewed as resulting in minimal cost.

The FAA has, therefore, determined that while this proposed rule is not an economically significant regulatory action as defined in section 3(f)(1) of Executive Order 12866, it is "significant" as defined in section 3(f) of Executive Order 12866 and DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

While we expect more than one small entity to be potentially subject to this rule, the completion of the proposed additional paperwork is thought to be of minimal cost.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraphs 312d and 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will

consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—Searching the Federal eRulemaking Portal (*http://www.regulations.gov*); Visiting the FAA's Regulations and Policies Web page at: *http://www.faa.gov/regulations_policies* or Accessing the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Afghanistan.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. In part 91, Special Federal Aviation Regulation (SFAR) No. 110 is added to read as follows:

Special Federal Aviation Regulation No. 110—Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan

1. *Applicability.* This rule applies to the following persons:

(a) All U.S. air carriers and U.S. commercial operators;

(b) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(c) All operators of U.S.-registered aircraft, except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided below, or in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Afghanistan below FL 160. This rule permits U.S. civil aircraft operations by persons described in paragraph 1 below flight level (FL) 160 within the territory and airspace of Afghanistan, only when approved by the FAA as provided herein.

(a) Overflights of Afghanistan may be conducted at or above FL 160 subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

(b) Flights departing from countries adjacent to Afghanistan whose climb performance will not permit operation at or above FL 160 prior to entering Afghan airspace may operate at altitudes below FL 160 within Afghanistan to the extent necessary to permit a climb above FL 160, subject to the approval of, and in accordance with the conditions established by, the appropriate authorities of Afghanistan.

3. *Permitted operations.* This SFAR does not prohibit persons described in section 1 from conducting flight operations within the territory and airspace of Afghanistan below FL 160 when such operations are authorized either by another agency of the United States Government with the approval of the FAA or by an exemption issued by the Administrator.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of Title 14 CFR parts 119, 121, or 135, each person who deviates from this rule must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

5. *Expiration.* This Special Federal Aviation Regulation will remain in effect for 5 years from the effective date. The FAA may amend, rescind, or extend the SFAR as necessary.

Issued in Washington, DC, on May 21, 2010.

Raymond Towles,

Acting Director, Flight Standards Service, Aviation Safety.

[FR Doc. 2010–12670 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–2010–0302; Notice No. 10–08]

RIN 2120–AJ75

The New York North Shore Helicopter Route

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed action would require helicopter operators to use the New York North Shore Route when operating in that area of Long Island, New York. The North Shore Route was added to the New York Helicopter Route

Chart in 2008 and the use of that route is currently voluntary. New York public officials have continued to receive complaints regarding the adverse impact of helicopter noise on their communities. The intended effect of this proposal is to maximize utilization of the existing route flown by helicopter traffic along the north shore of Long Island and reduce the noise impact on nearby communities.

DATES: Send your comments on or before June 25, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0302 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

For more information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket or Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Ellen Crum, Airspace and Rules Group, AJR–33, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783. For legal questions concerning this proposed rule contact Lorelei Peter, AGC–220, Office of Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073.

SUPPLEMENTARY INFORMATION:

Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the navigable airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40104 *et seq.,* § 40103(b). The FAA's authority for this proposed rule is contained in 49 U.S.C. 40103 and 44715. Under § 40103, the Administrator of the FAA has authority to "prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for * * * (B) protecting individuals and property on the ground. (49 U.S.C. 40103(b)(2)). In addition, § 44715(a), provides that to "relieve and protect the public health and welfare from aircraft noise," the Administrator of the FAA, "as he deems necessary, shall prescribe * * * (ii) regulations to control and abate aircraft noise * * *"

Background

In response to numerous complaints regarding helicopter noise received by New York public officials, including Senator Schumer and former Senator Clinton, the FAA began working with stakeholders and industry groups to address the issue. Senator Charles Schumer and Representative Tim Bishop conducted a meeting in October 2007 with the FAA, local helicopter operators and the airport proprietors to specifically address the noise complaints stemming from the north shore of Long Island. As a result of this meeting, a visual flight rules (VFR) helicopter route, the North Shore route, was designed for helicopters to use when transiting the area in order to lessen the noise impact on populated areas by remaining offshore and over the water. As this route was developed for VFR flight, use of it is voluntary. The route was published on the Helicopter Route Chart for New York, effective May 8, 2008.

The Helicopter Route Chart program was established by the FAA to enhance helicopter access into, egress from, and operation within high density traffic areas by depicting discrete and/or common use helicopter routes. Guidance and procedures for this program are contained in FAA Order 7210.3, Facility Operation and Administration, Chapter 11. The use of these routes is voluntary, unless air traffic control assigns the charted routes to pilots for purposes of addressing traffic density or safety.

New York elected officials have advised the FAA the noise complaints continue in this area notwithstanding the North Shore route. The local FAA Flight Standards Division has also received the same complaints.

The New York Long Island airspace, like many other areas in the U.S., presents competing interests. The geographic area is not vast but supports a highly congested populated area that is surrounded by traffic operating into and out of LaGuardia Airport, John F. Kennedy International Airport, Republic Airport and a multitude of both public and private heliports.

This proposed action would require civil helicopters along Long Island, New York's northern shoreline to follow the published New York North Shore Route between the fixed waypoint VPLYD and Orient Point. The FAA is aware that several conditions may exist for which helicopter operators would need to deviate from the route. Therefore, provisions are included that take into consideration the wide variety of helicopters, their associated performance and mission profiles, the dynamic weather environment along the route, and the pilot's responsibility to maintain safe operations at all times.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there is no new information collection requirement associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the

maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

This proposed action is not expected to result in additional costs on the affected helicopters because those operators that cannot comply with the route as published due to operational limitations, performance factors, weather conditions or safety considerations are allowed to deviate from the provisions of Subpart H.

FAA has, therefore, determined that this proposed rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would impact several small entities. For aircraft operators these include all firms with less than 1,500 employees. There are 5 small entities in the New York market for part 135 sightseeing helicopter tours. However, the rule does not require the purchase of additional equipment and allows pilots to deviate from the proposed provisions if necessary, due to operational limitations of the helicopter, performance factors, weather conditions or safety considerations. Therefore the rule imposes only minimal operating cost.

Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. As the proposed rule would have only a domestic impact, the Trade Agreement Act does not apply.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Environmental Analysis

Under regulations issued by the Council on Environmental Quality, federal agencies are required to establish procedures that, among other things, identify agency actions that are categorically excluded from the requirement for an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969 because they do not have a significant effect on the human environment. *See* 40 CFR 1507.3(b)(2)(ii), 1508.4. The required agency procedures must also

"provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." 40 CFR 1508.4. For FAA actions, these "categorical exclusions" and "extraordinary circumstances" are listed in Chapter 3 of FAA Order 1050.1E, "Environmental Impacts: Policies and Procedures."

The FAA has determined that this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f of FAA Order 1050.1E. That categorical exclusion applies to "[r]egulations, standards, and exemptions (excluding those which if implemented may cause a significant impact on the human environment)." The existing New York North Shore Route is a visual flight rules (VFR) route, use of which is voluntary. Additionally, the route is located entirely over water and away from noise-sensitive locations. Therefore, implementation of this proposed rule is not expected to result in significant adverse impacts to the human environment. Moreover, implementation of the proposed rule would not involve any of the extraordinary circumstances listed in Section 304 of FAA Order 1050.1E.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies*; or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph (1).

List of Subjects in 14 CFR Part 93

Air traffic control, Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Amend part 93 by adding subpart H to read as follows:

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

§ 93.101 Applicability.

§ 93.103 Helicopter operations.

Subpart H—Mandatory Use of the New York North Shore Helicopter Route

§ 93.101 Applicability.

This subpart prescribes a special air traffic rule for civil helicopters operating VFR along the North Shore, Long Island, New York.

§ 93.103 Helicopter operations.

(a) Unless otherwise authorized, each person piloting a helicopter along Long Island, New York's northern shoreline between the VPLYD waypoint and Orient Point, shall utilize the North Shore Helicopter route, as published.

(b) Pilots may deviate from the requirements of paragraph (a) when required for safety, weather conditions or transitioning to or from a destination or point of landing.

Issued in Washington, DC, on May 17, 2010.

Edie Parish,

Acting Director, Systems Operations, Airspace and Aeronautical Information Management.

[FR Doc. 2010–12606 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0327; FRL–8826–2]

Maneb; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke all the tolerances for the fungicide maneb because the Agency has approved requests for voluntary cancellation by registrants of the last registrations for the food uses of maneb in the United States.

DATES: Comments must be received on or before July 26, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0327, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0327. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under section 408(f) of the Federal Food, Drug, and Cosmetic Act (FFDCA), if needed. The order would specify data needed and the timeframes for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA issues a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke all the tolerances for residues of the fungicide maneb, manganous ethylenebisdithiocarbamate, because the Agency has approved requests for voluntary cancellation by registrants of the last registrations for food uses of maneb in the United States. These tolerances are associated with food uses that are no longer registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and therefore are no longer needed. It is EPA's general practice to propose revocation of those tolerances/tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person submits comments on the proposal that indicate a need for the tolerance to cover residues in or on imported commodities or legally treated domestic commodities.

EPA completed a Reregistration Eligibility Decision (RED) for maneb in 2005, which included a tolerance reassessment summary for maneb. As part of the tolerance reassessment, the Agency recommended specific changes to the tolerance definition for maneb, changes to tolerance values, tolerances to be revoked, and new tolerances to be proposed to be established. EPA also reviewed any Codex Alimentarius maximum residue limits (MRLs) for maneb. Because Codex has no established MRLs for maneb *per se*, but groups MRLs for maneb with MRLs for dithiocarbamate pesticides expressed in terms of parts per million (ppm) carbon disulfide, EPA recommended harmonizing with Codex by changing the tolerance definition for maneb, so that it is expressed in terms of carbon disulfide.

In the maneb RED, the Agency recommended revocation of certain maneb tolerances which still exist in 40 CFR 180.110(a). Maneb use on certain crops was disallowed by EPA, as announced in a notice published in the **Federal Register** of March 2, 1992 (57 FR 7484) (FRL–4045–8). In that notice, the Agency announced its conclusion of Special Review (PD4) regarding ethylene bisdithiocarbamate (EBDC) fungicides, including maneb, and its intent to cancel any EBDC product registrations bearing food uses that included, among others, apricots, succulent beans, carrots, celery, nectarines, and peaches. There have been no U.S. registrations for maneb use on apricots, succulent beans, nectarines, and peaches since 1992, and no U.S. registrations for maneb use on carrots and celery since 1994. Therefore, the maneb tolerances on these commodities are no longer needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.110(a) for maneb residues of concern in or on apricot; bean, succulent; carrot, roots; celery; nectarine; and peach.

Subsequent to the RED, all maneb technical and end-use registrants chose to request voluntary cancellation of all U.S. registrations for maneb technical grade active ingredient and end-use maneb products. Registrants submitted their voluntary requests for cancellation of their maneb technical and product registrations to EPA in accordance with section 6(f) of FIFRA, and the Agency published notices of their receipt and subsequent cancellation orders in the **Federal Register**, which are summarized herein.

In a **Federal Register** notice of September 12, 2008 (73 FR 53007) (FRL–8380–7), EPA announced receipt of a request from United Phosphorous Inc. to voluntarily cancel all of its maneb registrations. EPA accepted this request and published a cancellation order, for all United Phosphorous maneb products, in a **Federal Register** notice of August 26, 2009 (74 FR 43124)(FRL–8429–6), effective on August 26, 2009. Under conditions of the cancellation order, United Phosphorous Inc. was permitted to sell and distribute existing stocks of the canceled maneb products until December 31, 2009. Also, this order permitted persons other than the registrant to sell and distribute existing stocks of the canceled maneb products until supplies were exhausted and formulate end use products until March 2010.

In a **Federal Register** notice of January 6, 2010 (75 FR 860) (FRL–8806–3), EPA announced the Agency's receipt of a request from Drexel Chemical Company to voluntarily cancel its technical registration for maneb and thereby terminate the last maneb technical product registered in the United States (EPA Reg. No. 19713–377). After the close of the 30–day comment period, EPA approved cancellation of this last maneb technical product, and issued a cancellation order in the **Federal Register** notice of February 24, 2010 (75 FR 8340) (FRL–8813–9), effective on February 24, 2010. Under conditions of the cancellation order, Drexel Chemical Company was permitted to sell and distribute existing stocks of the canceled maneb technical product until February 26, 2010 and formulate end-use products until March 10, 2010. Also, this order permitted persons other than the registrants to use the maneb end-use products until supplies are exhausted.

In another **Federal Register** notice of January 6, 2010 (75 FR 869) (FRL–8806–2), EPA announced the Agency's receipt of request from Drexel Chemical Company to voluntarily cancel its last maneb registrations. After the close of the 30–day comment period, EPA approved cancellation of the registrations, and issued a cancellation order in a **Federal Register** notice of February 26, 2010 (75 FR 8942) (FRL–8813–6), effective February 26, 2010. Under conditions of the cancellation order, Drexel Chemical Company was permitted to sell and distribute existing stocks of the canceled maneb products until supplies are exhausted. Also, this order permitted persons other than the registrants to sell, distribute, and use existing stocks of the canceled maneb products until supplies are exhausted.

Also, in a **Federal Register** notice of March 4, 2010 (75 FR 9896) (FRL–8813–5), EPA announced the Agency's receipt

of requests from DuPont Crop Protection to voluntarily cancel their maneb product registration (EPA Reg. No. 352–655), the last maneb product registered for use in the United States, thereby terminating the last maneb food uses in the United States. After the close of the 30–day comment period, EPA approved cancellation of this product registration and issued a cancellation order in the **Federal Register** of April 16, 2010 (75 FR 19967) (FRL–8822–2), effective on April 16, 2010. Under conditions of the cancellation order, DuPont Crop Protection was permitted to sell and distribute existing stocks of the canceled maneb product until supplies are exhausted. Also, this order permitted persons other than the registrants to sell, distribute, and use existing stocks of the canceled maneb product until supplies are exhausted.

In the time since the last cancellation order, the Agency has received information from the registrants that significant levels of existing stocks of the canceled maneb products are unlikely. Therefore, the Agency believes that end users have had sufficient time to exhaust those existing stocks and for maneb treated commodities to have cleared the channels of trade. The termination of the last food uses means that the tolerances will no longer be needed and should be revoked. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.110(a) on almond; apple; banana (not more than 0.5 part per million shall be in the pulp after peel is removed and discarded (preharvest application only)); bean, dry, seed; beet, sugar, tops; broccoli; Brussels sprouts; cabbage; cabbage, Chinese, bok choy; cabbage, Chinese, napa; cauliflower; collards; corn, sweet, kernel plus cob with husks removed; cranberry; cucumber; eggplant; endive; fig; grape; kale; kohlrabi; lettuce; melon; mustard greens; onion; papaya; pepper; potato; pumpkin; squash, summer; squash, winter; tomato; turnip, greens; and turnip, roots. EPA is proposing that these revocations become effective on the date of publication of the final rule for maneb in the **Federal Register**.

Because the time-limited tolerance associated with the use of maneb under a FIFRA section 18 emergency exemption for combined maneb residues of concern in or on walnut expired on December 31, 2009, it should be removed. Therefore, EPA is proposing to remove the expired tolerance in 40 CFR 180.110(b) on walnut.

B. What is the Agency's Authority for Taking this Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by Food Quality Protection Act (FQPA) of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA's general practice is to propose revocation of tolerances/tolerance exemptions for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as "import tolerances," are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of FFDCA, a tolerance/tolerance exemption may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances/tolerance exemptions for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances/tolerance exemptions. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances/tolerance exemptions should be aware that additional data may be needed to support retention. These parties should be aware that, under section 408(f) of FFDCA, if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance/tolerance exemption at issue.

C. When Do These Actions Become Effective?

EPA is proposing that revocation of these maneb tolerances and removal of the expired maneb tolerance become effective on the date of publication of the final rule in the **Federal Register**. Most of the maneb tolerances proposed for revocation in this document are associated with uses that have been canceled in 2010. However, the available information on recently canceled maneb products indicates that significant levels of existing stocks are unlikely. Therefore, the Agency believes that existing stocks of maneb products labeled for uses associated with tolerances proposed for revocation have been completely exhausted and that maneb treated commodities have had sufficient time for passage through the

channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider that information prior to moving forward with tolerance revocation. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION.**

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to section 408(l)(5) of FFDCA, as established by FQPA. Under this unit, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

III. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by section 408(b)(4) of FFDCA. The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, section 408(b)(4) of FFDCA requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for maneb *per se*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to revoke specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action (e.g., tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020) (FRL–5753–1), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed rule will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change the EPA's previous analysis. Any comments about the Agency's determination should be submitted to the EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 14, 2010.

Steven Bradbury,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.110 [Removed]

2. Section 180.110 is removed.

[FR Doc. 2010–12376 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 482 and 485

[CMS–3227–P]

RIN 0938–AQ05

Medicare and Medicaid Programs: Proposed Changes Affecting Hospital and Critical Access Hospital (CAH) Conditions of Participation (CoPs): Credentialing and Privileging of Telemedicine Physicians and Practitioners

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the conditions of participation (CoPs) for both hospitals and critical access hospitals (CAHs). These revisions would allow for a new credentialing and privileging process for physicians and practitioners providing telemedicine services.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 26, 2010.

ADDRESSES: In commenting, please refer to file code CMS–3227–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3227–P, P.O. Box 8010, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3227–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. (Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the "Collection of Information Requirements" section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: CDR Scott Cooper, USPHS (410) 786–9465. Marcia Newton, (410) 786–5265. Jeannie Miller, (410) 786–3164.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244, on Monday through Friday of each week from 8:30 a.m. to 4 p.m. EST. To schedule an appointment to view public comments, phone 1–800–743–3951.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access,* a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web (the Superintendent of Documents' home page address is *http://www.gpoaccess.gov/index.html*), by using local WAIS client software, or by telnet to *swais.access.gpo.gov,* then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as a guest (no password required).

I. Background

The current Medicare Hospital conditions of participation (CoPs) for credentialing and privileging of medical staff at 42 CFR 482.12(a)(2) and 482.22(a)(2) require the governing body of the hospital to make all privileging decisions based upon the recommendations of its medical staff after the medical staff has thoroughly examined and verified the credentials of practitioners applying for privileges, and also used specific criteria to determine whether an individual practitioner should be privileged at the hospital. The current critical access hospital (CAH) CoPs at 42 CFR 485.616(b) require every CAH that is a member of a rural health network to have an agreement for review of physicians and practitioners seeking privileges at the CAH. The agreement must be with a hospital that is a member of the network, a Medicare Quality Improvement Organization (QIO), or another qualified entity identified in the State's rural health plan. In addition, the services provided by each doctor of medicine or osteopathy at the CAH must be evaluated by one of these same three types of outside parties. These requirements apply to all physicians and practitioners seeking privileges at the hospital or CAH, regardless of whether services will be provided in-person and on-site at the hospital or CAH, or remotely through a telecommunications system. CMS regulations currently require hospitals and CAHs receiving telemedicine services to privilege each physician or practitioner providing services to its patients as if such practitioner were on-site.

While hospitals may use third party credentialing verification organizations to relieve the time-consuming burden of compiling and verifying the credentials of practitioners applying for privileges, the hospital's governing body is still responsible for all privileging decisions. Similarly, each CAH is required to have its privileging decisions made by either its governing body or the person responsible for the CAH.

In the past, hospitals that were accredited by the Joint Commission (TJC) were deemed to have met the Medicare CoPs, including the credentialing and privileging requirements, under TJC's statutory deeming authority. Section 125 of the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110–275, July 15, 2008) (MIPPA), terminated the statutory recognition of TJC's hospital accreditation program, effective July 15, 2010. The law requires TJC to secure CMS approval of its standards in order to confer Medicare deemed status on hospitals after July 15, 2010. This means that we do not have the discretion under the law to accept TJC policies or standards that do not meet or exceed the Medicare CoPs. One TJC policy that has been in direct conflict with the CoPs has been TJC's practice of permitting "privileging by proxy," which has allowed TJC-accredited hospitals to utilize a different methodology to privilege "distant-site" (as that term is defined at section 1834(m)(4)(A) of the Social Security Act (the Act)) physicians and practitioners. In short, TJC privileging by proxy standards allowed for one TJC-accredited facility to accept the privileging decisions of another TJC-accredited facility. Hospitals that have used this method to privilege distant-site medical staff technically did not meet CMS requirements that applied to other hospitals even though they were TJC-accredited. When CMS learned of specific instances of such noncompliance through on-site surveys by State Survey Agencies, the hospital was required to change its policies to come into compliance.

As of July 15, 2010, TJC will be statutorily required to enforce CMS requirements regarding privileging physicians and practitioners in the hospitals they accredit, both those providing and those receiving telemedicine services. TJC-accredited hospitals, therefore, are concerned that they may be unable to meet the long-standing CMS privileging requirements while sustaining their current telemedicine agreements. Small hospital and CAH medical staffs, in particular, are concerned about the burden of privileging hundreds of specialty physicians and practitioners that large academic medical centers make available to them.

Upon reflection, we came to the conclusion that our present requirement is a duplicative and burdensome process for physicians, practitioners, and the hospitals involved in this process, particularly small hospitals, which often lack adequate resources to fully carry out the traditional credentialing and privileging process for all of the physicians and practitioners that may be available to provide telemedicine services. In addition to the costs involved, small hospitals often do not have in-house medical staff with the clinical expertise to adequately evaluate and privilege the wide range of specialty physicians that larger hospitals can provide through telemedicine services.

CMS has become increasingly aware, through outreach efforts and communications with the various stakeholders in the telemedicine community (for example, large academic medical centers that provide telemedicine services; small hospitals that make effective use of these services for the benefit of their patients; representative professional organizations; and Congressional representatives whose various constituencies are made up of telemedicine practitioners as well as the patients receiving telemedicine services), of the urgent need to revise the CoPs in this area so that access to these vital services may continue in a manner that is both safe and beneficial for patients and is free of unnecessary and duplicative regulatory impediments.

II. Provisions of the Proposed Rule

The following provisions of this proposed rule would apply to all hospitals and CAHs participating in the Medicare and Medicaid programs. Section 1861(e)(1) through (9) of the Act: (1) Defines the term "hospital"; (2) lists the statutory requirements that a hospital must meet to be eligible for Medicare participation; and (3) specifies that a hospital must also meet other requirements as the Secretary finds necessary in the interest of the health and safety of the hospital's patients. Under this authority, the Secretary has established in the regulations 42 CFR part 482, the requirements that a hospital must meet to participate in the Medicare program. Section 1905(a) of the Act provides that Medicaid payments may be applied to hospital services. Regulations at 42 CFR 440.10(a)(3)(iii) require hospitals to meet the Medicare CoPs to qualify for participation in Medicaid.

We recognize the advantages and benefits that telemedicine provides for patients and are interested in reducing the burden and the duplicative efforts of the traditional credentialing and privileging process for Medicare-participating hospitals, both those which provide telemedicine services and those which use such services. Therefore, we are proposing to revise both the hospital and CAH credentialing and privileging requirements to eliminate these regulatory impediments and allow for the advancement of telemedicine nationwide while still protecting the health and safety of patients. We believe that these proposed revisions would preserve and strengthen the core values of the credentialing and privileging process for all hospitals: accountability to all patients, and assurance that medical staff are privileged to provide services in the

hospital based on evaluation of the practitioner's medical competency.

Hospital CoPs (§ 482.12 and § 482.22)

The proposed revisions to the hospital CoPs for the credentialing and privileging of telemedicine physicians and practitioners are contained within two separate CoPs: § 482.12, "Governing body," and § 482.22, "Medical staff."

For the Governing body CoP, we are proposing to add a new paragraph, § 482.12(a)(8), which would require the hospital's governing body to ensure that, when telemedicine services are furnished to the hospital's patients through an agreement with a Medicare-participating hospital (the "distant-site" hospital as defined at section 1834(m)(4)(A) of the Act), the agreement must specify that it is the responsibility of the governing body of the distant-site hospital providing the telemedicine services to meet the existing requirements in § 482.12(a)(1) through (a)(7) with regard to its physicians and practitioners who are providing telemedicine services. These existing provisions cover the distant-site hospital's governing body responsibilities for its medical staff that all Medicare-participating hospitals must meet.

The proposed requirements at § 482.12(a)(8) would allow the governing body of the hospital whose patients are receiving the telemedicine services to grant privileges based on its medical staff recommendations, which would rely on information provided by the distant-site hospital, as a more efficient means of privileging the individual distant-site physicians and practitioners providing the services.

This provision would be accompanied by the proposed requirement in the "Medical staff" CoP at § 482.22(a)(3), which would provide the basis on which the hospital's governing body, through its agreement as noted above, can choose to have its medical staff rely upon information furnished by the distant-site hospital when making recommendations on privileges for the individual physicians and practitioners providing such services. This option would allow the hospital's medical staff to rely upon the credentialing and privileging decisions of the distant-site hospital in lieu of the current requirements at § 482.22(a)(1) and (a)(2), which require the hospital's medical staff to conduct individual appraisals of its members and examine the credentials of each candidate in order to make a privileging recommendation to the governing body. This option would not prohibit a hospital's medical staff from continuing to perform its own periodic appraisals of telemedicine members of its staff, nor would it bar them from continuing to use the traditional credentialing and privileging process required under the current regulations. The intent of this proposed requirement is to relieve burden for smaller hospitals by providing for a less duplicative and more efficient privileging scheme with regard to physicians and practitioners providing telemedicine services.

However, in an effort to ensure accountability to the process, we are proposing within this same provision (§ 482.22(a)(3)) that the hospital, in order to choose this less burdensome option for privileging, must ensure that—(1) The distant-site hospital providing the telemedicine services is a Medicare-participating hospital; (2) the individual distant-site physician or practitioner is privileged at the distant-site hospital providing telemedicine services, and that this distant-site hospital provides a current list of the physician's or practitioner's privileges; (3) the individual distant-site physician or practitioner holds a license issued or recognized by the State in which the hospital, whose patients are receiving the telemedicine services, is located; and (4) with respect to a distant-site physician or practitioner granted privileges by the hospital, the hospital has evidence of an internal review of the distant-site physician's or practitioner's performance of these privileges and sends the distant-site hospital this information for use in its periodic appraisal of the individual distant-site physician or practitioner. We are also proposing, at a minimum, the information sent for use in the periodic appraisal would have to include all adverse events that may result from telemedicine services provided by the distant-site physician or practitioner to the hospital's patients and all complaints the hospital has received about the distant-site physician or practitioner.

Within the revisions to the hospital CoPs, we are also proposing that additional language be added to the current requirement at § 482.22(c)(6), which requires that the hospital's medical staff bylaws include criteria for determining privileges and a procedure for applying the criteria to individuals requesting privileges. We are proposing to add language to stipulate that in cases where distant-site physicians and practitioners are requesting privileges to furnish telemedicine services through an agreement between hospitals, the criteria for determining those privileges and the procedure for applying the criteria would be subject to the proposed requirements at § 482.12(a)(8) and § 482.22(a)(3).

Critical Access Hospital (CAH) CoPs (§ 485.616 and § 485.641)

The proposed revisions to the CAH CoPs are found at § 485.616, "Agreements," and § 485.641, "Periodic evaluation and quality assurance review." However, the majority of the proposed revisions, particularly those which mirror the proposed hospital revisions, are found in the "Agreements" CoP, specifically § 485.616(c). We are proposing to add a new standard at § 485.616(c) entitled, "Agreements for credentialing and privileging of telemedicine physicians and practitioners."

The proposed telemedicine credentialing and privileging requirements for CAHs are modeled after the hospital requirements, with almost no differences in the regulatory language. Since the only existing requirements in the CAH CoPs specific to the responsibility of the governing body to grant medical staff privileges concerns surgical privileges for practitioners, we are proposing to add language that follows the language in the hospital requirements at § 482.12(a). This language delineates the responsibilities of the governing body for the medical staff privileging process.

At § 485.641(b)(4)(iv), we would make a minor change to the CAH CoPs that do not have an equivalent provision in the hospital CoPs. We are proposing to add a new requirement that would allow the distant-site hospital to evaluate the quality and appropriateness of the diagnosis and treatment furnished by its own staff when providing telemedicine services to the CAH. This proposed requirement would be in addition to the three other entities already allowed to perform this function under the existing regulations.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.

- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this document that contain information collection requirements (ICRs):

A. ICRs Regarding Condition of Participation: Governing Body (§ 482.12)

Section 482.12(a)(8) would require the governing body of a hospital to ensure that, when telemedicine services are furnished to the hospital's patients through an agreement with a distant-site hospital, the agreement specifies that it is the responsibility of the governing body of the distant-site hospital to meet the requirements in paragraphs (1) through (7) of this subsection with regard to its physicians and practitioners providing telemedicine services. The burden associated with this requirement would be the time and effort necessary for a hospital's governing body to develop, initially review, and annually review the agreement with a distant-site hospital. We estimate that 4,860 hospitals (not including 1,314 CAHs) must develop the aforementioned written agreement. We also estimate that the development and review of the agreement would take 1,440 minutes initially and the review would take 360 minutes annually. The total cost associated with this proposed requirement is $2,346.

B. ICRs Regarding Condition of Participation: Medical Staff (§ 482.22)

Section 482.22(a)(3) states that when telemedicine services are furnished to a hospital's patients through an agreement with a distant-site hospital, the governing body of the hospital whose patients are receiving the telemedicine services may choose to have its medical staff rely upon information furnished by the distant-site hospital when making recommendations on privileges for the individual physicians and practitioners providing such services. To do this, a hospital's governing body must ensure that all of the provisions listed at § 482.22(a)(3)(i) through (iv) are met. Specifically, § 482.22(a)(3)(iv) contains a third-party disclosure requirement. Section 482.22(a)(3)(iv) states that with respect to a distant-site physician or practitioner granted privileges, the hospital whose patients are receiving the telemedicine services, has evidence of an internal review of the distant-site physician's or practitioner's performance of these privileges and sends the distant-site hospital such information for use in the periodic appraisal of the distant-site physician or practitioner. At a minimum, this information would include all adverse events that result from the telemedicine services provided by the distant-site physician or practitioner to the hospital's patients and all complaints the hospital has received about the distant-site physician or practitioner.

The burden associated with this third-party disclosure requirement would be the time and effort necessary for a hospital to send evidence of a distant-site physician's or practitioner's performance review to the distant-site hospital with which it has an agreement for providing telemedicine services. We estimate 4,860 hospitals (not including 1,314 CAHs) would have to comply with this requirement. Similarly, we estimate that each disclosure would take 60 minutes and that there would be approximately 32 annual disclosures. The estimated cost associated with this proposed requirement is $1,248.

C. ICRs Regarding Condition of Participation: Agreements (§ 485.616)

Section 485.616(c)(1) would state that the governing body of the CAH must ensure that, when telemedicine services are furnished to the CAH's patients through an agreement with a distant-site hospital, the agreement specifies that it is the responsibility of the governing body of the distant-site hospital to meet the proposed requirements listed at § 485.616(c)(1)(i) through (vii) and § 485.616(c)(2). The burden associated with this proposed requirement would be the time and effort necessary for a CAH's governing body to develop, initially review, and annually review the agreement with a distant-site hospital. We estimate that 1,314 CAHs must develop and review the aforementioned written agreement. We also estimate that development and review of the agreement would take 1440 minutes initially and the review would take 360 minutes annually. The total cost associated with this proposed requirement is $2,346.

Section 485.616(c)(2) would state that when telemedicine services are furnished to the CAH's patients through an agreement with a distant-site hospital, the CAH's governing body or responsible individual may choose to rely upon the credentialing and privileging decisions made by the governing body of the distant-site hospital for individual distant-site physicians or practitioners, if the CAH's governing body or responsible individual ensures that all of the provisions listed at § 485.616(c)(2)(i) through (iv) are met. The burden associated with this third-party disclosure requirement at § 485.616(c)(2)(iv) would be the time and effort necessary for a CAH to send evidence of a distant-site physician's or practitioner's performance review to the distant-site hospital with which it has an agreement for providing telemedicine services. We estimate 1,314 CAHs would have to comply with this proposed requirement. Similarly, we estimate that each disclosure would take 60 minutes and that there would be approximately 32 annual disclosures. The estimated cost associated with this proposed requirement is $1,248.

TABLE 1—ANNUAL REPORTING AND RECORDKEEPING BURDEN

Regulation section(s)	OMB control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)	Total capital/ maintenance costs ($)	Total cost ($)
§ 482.12(a)(8)	0938–New	4,860	4,860	24	116,640	**	8,942,400	0	8,942,400
	.....	4,860	4,860	6	29,160	**	2,459,160	0	2,459,160
§ 482.22(a)(3)	0938–New	4,860	155,520	1	155,520	39	6,065,280	0	6,065,280
§ 485.616(c)(1)	0938–New	1,314	1,314	24	31,536	**	2,417,760	0	2,417,760
	.....	1,314	1,314	6	7,884	**	664,884	0	664,884
§ 485.616(c)(2)	0938–New	1,314	42,048	1	42,048	39	1,639,872	0	1,639,872
Total	.....	6,174	209,916	.....	382,788	.....	.....	.....	.....

** Wage rates vary by level of staff involved in complying with the information collection request (ICR). The wage rates associated with the aforementioned information collection requirements are listed in Tables 2–9 in the regulatory impact analysis of this proposed rule.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–3227–IFC.

Fax: (202) 395–6974; or

E-mail: *OIRA_submission@omb.eop.gov.*

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act (the Act), section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule is not an economically significant rule and does not impose significant costs. The benefits of finalizing this proposed rule would greatly outweigh any costs imposed. Conversely, the negative impacts on overall patient health and safety as well as on the operating costs of individual hospitals were this rule not to be finalized would be significant compared to the minimal cost imposed. Accordingly, we have prepared a regulatory impact analysis, which to the best of our ability, presents the costs and benefits of the rulemaking.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that the great majority of hospitals, including CAHs, are small entities as that term is used in the RFA. Individuals and States are not included in the definition of a small entity. While we do not believe that this proposed rule would have a significant impact on small entities, we do believe, as we have stated previously, that this rule would have a positive impact by providing immediate regulatory relief for these small entities and would negatively impact them if not finalized. Therefore, we are voluntarily preparing a Regulatory Flexibility Analysis.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule would not have a significant impact on small rural hospitals as it is intended to relieve the burden on hospitals, particularly on small rural hospitals and CAHs, and to reduce or eliminate the impact of the current regulatory impediments to efficient operation and patient access to essential healthcare services. Therefore, the Secretary has determined that this proposed rule would not have a significant negative impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold is approximately $135 million. This rule does not contain mandates that would impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $135 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This proposed rule would not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

B. Anticipated Effects

1. Effects on Hospitals and Critical Access Hospitals (CAHs)

We estimate the costs to hospitals and CAHs to implement this proposed rule to be minimal. The major costs are related to the agreement between the distant-site hospital and the hospital or CAH at which patients who receive the telemedicine services are located. Many hospitals and CAHs already have such telemedicine service agreements in place and would not incur the initial costs of developing and reviewing such an agreement.

Our figures, as of March 31, 2010, indicate that there were 4,860 hospitals and 1,314 CAHs (for a total of 6,174) in the United States. However, we have no way of determining an exact number on which of these hospitals provide telemedicine services and which of these hospitals and CAHs receive services, nor can we determine how many hospitals and CAHs already have telemedicine agreements. Accordingly, we have based on our cost estimates on the higher costs that would be incurred if every hospital and CAH in the United States were required to develop the agreement, to review it initially, and to review it annually. We prepared the cost estimates for hospitals and CAHs separately. However, all sides of this equation would require the initial services of a hospital or CAH attorney at an average of $66/hour; a hospital or CAH chief of the medical staff (a physician) at an average of $112/hour; and a hospital or CAH administrator at an average of $75/hour. For the third-party disclosure requirements, we also prepared the cost estimates for hospitals and CAHs separately, though both would require the annual services of a medical staff credentialing manager or a medical staff coordinator at an average of $39/hour. Our salary figures are from *http://www.salary.com/*. Our estimates of time and cost for each aspect of the proposed agreement (development, initial review, and annual review), as well as for the third-party disclosure, is as follows:

TABLE 2—INFORMATION COLLECTION REQUIREMENTS FOR A HOSPITAL TO DEVELOP AN AGREEMENT FOR TELEMEDICINE SERVICES: INITIAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Attorney	$66	8	$528	
Physician	112	2	224	$1052
Hospital Administrator	75	4	300	

TABLE 3—INFORMATION COLLECTION REQUIREMENTS FOR A HOSPITAL TO REVIEW AN AGREEMENT FOR TELEMEDICINE SERVICES: INITIAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total Cost
Attorney	$66	4	$264	
Physician	112	2	224	$788
Hospital Administrator	75	4	300	

TABLE 4—INFORMATION COLLECTION REQUIREMENTS FOR A HOSPITAL TO REVIEW AN AGREEMENT FOR TELEMEDICINE SERVICES: ANNUAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Attorney	$66	2	$132	
Physician	112	2	224	$506
Hospital Administrator	75	2	150	

Therefore, we estimate the total initial cost to develop and review the agreement for all 4,860 hospitals to be $8.9 million. The annual cost to review agreements for all hospitals is estimated at $2.5 million.

TABLE 5—INFORMATION COLLECTION REQUIREMENTS FOR A CAH TO DEVELOP AN AGREEMENT FOR TELEMEDICINE SERVICES: INITIAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Attorney	$66	8	$528	
Physician	112	2	224	$1052
CAH Administrator	75	4	300	

TABLE 6—INFORMATION COLLECTION REQUIREMENTS FOR A CAH TO REVIEW AN AGREEMENT FOR TELEMEDICINE SERVICES: INITIAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Attorney	$66	4	$264	
Physician	112	2	224	$788
CAH Administrator	75	4	300	

TABLE 7—INFORMATION COLLECTION REQUIREMENTS FOR A CAH TO REVIEW AN AGREEMENT FOR TELEMEDICINE SERVICES: ANNUAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Attorney	$66	2	$132	
Physician	112	2	224	$506
Hospital administrator	75	2	150	

Therefore, we estimate the total initial cost to develop and review the agreement for all 1,314 CAHs to be $2.4 million. The annual cost to review agreements for all CAHs is estimated at $664,884.

TABLE 8—INFORMATION COLLECTION REQUIREMENTS FOR A HOSPITAL TO PREPARE AND SEND INDIVIDUAL PERFORMANCE REVIEWS FOR TELEMEDICINE SERVICES (THIRD-PARTY DISCLOSURE): ANNUAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Medical Staff Coordinator or Medical Staff Credentialing Manager	$39	32	$1,248	$1,248

Therefore, we estimate the total annual cost to prepare and send individual performance reviews for telemedicine services (third-party disclosure) for all 4,860 hospitals to be $6.1 million.

TABLE 9—INFORMATION COLLECTION REQUIREMENTS FOR A CAH TO PREPARE AND SEND INDIVIDUAL PERFORMANCE REVIEWS FOR TELEMEDICINE SERVICES (THIRD-PARTY DISCLOSURE): ANNUAL COST

Individual	Hourly wage	Number of hours	Cost per individual	Total cost
Medical Staff Coordinator or Medical Staff Credentialing Manager	$39	32	$1248	$1248

Therefore, we estimate the total annual cost to prepare and send individual performance reviews for telemedicine services (third-party disclosure) for all 1,314 CAHs to be $1.6 million.

The total cost of the information collection requirements for both hospitals and CAHs is estimated to be $22.1 million.

C. Conclusion

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 482

Grant programs—Health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements

42 CFR Part 485

Grant programs—Health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as set forth below:

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

Subpart B—Administration

2. Section 482.12 is amended by adding a new paragraph (a)(8) to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(a) * * *

(8) Ensure that, when telemedicine services are furnished to the hospital's patients through an agreement with a distant-site (as defined in section 1834(m)(4)(A) of the Act) hospital, the agreement specifies that it is the responsibility of the governing body of the distant-site hospital to meet the requirements in paragraphs (a)(1) through (a)(7) of this section with regard to its physicians and practitioners providing telemedicine services. The governing body of the hospital whose patients are receiving the telemedicine services may, in accordance with § 482.22(a)(3), grant privileges based on its medical staff recommendations that rely on information provided by the distant-site hospital.

* * * * *

Subpart C—Basic Hospital Functions

3. Section 482.22 is amended by—

A. Adding a new paragraph (a)(3).

B. Revising paragraph (c)(6).

The addition and revision read as follows:

§ 482.22 Condition of participation: Medical staff.

* * * * *

(a) * * *

(3) When telemedicine services are furnished to the hospital's patients through an agreement with a distant-site (as defined at section 1834(m)(4)(A) of the Act) hospital, the governing body of the hospital whose patients are receiving the telemedicine services may choose, in lieu of the requirements in paragraphs (a)(1) and (a)(2) of this section, to have its medical staff rely upon information furnished by the distant-site hospital when making recommendations on privileges for the individual distant-site physicians and practitioners providing such services, if the hospital's governing body ensures that all of the following provisions are met:

(i) The distant-site hospital providing the telemedicine services is a Medicare-participating hospital.

(ii) The individual distant-site physician or practitioner is privileged at the distant-site hospital providing the telemedicine services, which provides a current list of the distant-site physician's or practitioner's privileges.

(iii) The individual distant-site physician or practitioner holds a license issued or recognized by the State in which the hospital, whose patients are receiving the telemedicine services, is located.

(iv) With respect to a distant-site physician or practitioner granted privileges, the hospital, whose patients are receiving the telemedicine services, has evidence of an internal review of the distant-site physician's or practitioner's performance of these privileges and sends the distant-site hospital such performance information for use in the periodic appraisal of the distant-site physician or practitioner. At a minimum, this information must include all adverse events that result from the telemedicine services provided by the distant-site physician or practitioner to the hospital's patients and all complaints the hospital has received about the distant-site physician or practitioner.

* * * * *

(c) * * *

(6) Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges. For distant-site physicians and practitioners requesting

privileges to furnish telemedicine services under an agreement with the hospital, the criteria for determining privileges and the procedure for applying the criteria are also subject to the requirements in § 482.12(a)(8) and § 482.22(a)(3).

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

4. The authority citation for part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart F—Conditions of Participation: Critical Access Hospitals (CAHs)

5. Section 485.616 is amended by adding a new paragraph (c) to read as follows:

§ 485.616 Condition of participation: Agreements.

* * * * *

(c) *Standard: Agreements for credentialing and privileging of telemedicine physicians and practitioners.* (1) The governing body of the CAH must ensure that, when telemedicine services are furnished to the CAH's patients through an agreement with a distant-site (as defined at section 1834(m)(4)(A) of the Act) hospital, the agreement specifies that it is the responsibility of the governing body of the distant-site hospital to meet the following requirements with regard to its physicians or practitioners providing telemedicine services:

(i) Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff.

(ii) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff.

(iii) Assure that the medical staff has bylaws.

(iv) Approve medical staff bylaws and other medical staff rules and regulations.

(v) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients.

(vi) Ensure the criteria for selection are individual character, competence, training, experience, and judgment.

(vii) Ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship or membership in a specialty body or society.

(2) When telemedicine services are furnished to the CAH's patients through an agreement with a distant-site (as defined at section 1834(m)(4)(A) of the Act) hospital, the CAH's governing body or responsible individual may choose to rely upon the credentialing and privileging decisions made by the governing body of the distant-site hospital regarding individual distant-site physicians or practitioners. The CAH's governing body or responsible individual must ensure that the following provisions are met:

(i) The distant-site hospital providing telemedicine services is a Medicare-participating hospital.

(ii) The individual distant-site physician or practitioner is privileged at the distant-site hospital providing the telemedicine services, which provides a current list of the distant-site physician's or practitioner's privileges;

(iii) The individual distant-site physician or practitioner holds a license issued or recognized by the State in which the CAH is located; and

(iv) With respect to a distant-site physician or practitioner granted privileges by the CAH, the CAH has evidence of an internal review of the distant-site physician's or practitioner's performance of these privileges and sends the distant-site hospital such information for use in the periodic appraisal of the individual distant-site physician or practitioner. At a minimum, this information must include all adverse events that result from the telemedicine services provided by the distant-site physician or practitioner to the CAH's patients and all complaints the CAH has received about the distant-site physician or practitioner.

6. Section 485.641 is amended by—

A. Republishing paragraph (b)(4)(i).

B. Revising paragraphs (b)(4)(ii) and (iii).

C. Adding a new paragraph (b)(4)(iv).

The additions and revisions read as follows:

§ 485.641 Condition of participation: Periodic evaluation and quality assurance review

* * * * *

(b) * * *

(4) The quality and appropriateness of the diagnosis and treatment furnished by doctors of medicine or osteopathy at the CAH are evaluated by—

(i) One hospital that is a member of the network, when applicable;

(ii) One QIO or equivalent entity;

(iii) One other appropriate and qualified entity identified in the State rural health care plan; or

(iv) In the case of distant-site physicians and practitioners providing telemedicine services to the CAH's patients under an agreement between the CAH and a distant-site (as defined at section 1834(m)(4)(A) of the Act) hospital, the distant-site hospital.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program). (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: May 20, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: May 21, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–12647 Filed 5–21–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2010–0066]

Reports, Forms and Record Keeping Requirements, Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed extension, without change, of a currently approved collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, the agency must receive approval from the Office of Management and Budget ("OMB"). Under procedures established by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. In compliance with the Paperwork Reduction Act of 1995, this notice describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be submitted on or before July 26, 2010.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the

online instructions for submitting comments.

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

• *Fax:* (202) 493–2251.

Regardless of how you submit your comments, please be sure to mention the docket number of this document and cite OMB Clearance No. 2127–0609, "Criminal Penalty Safe Harbor Provision."

You may call the Docket at 202–366–9322.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: For questions please contact Mr. John Piazza in the Office of the Chief Counsel at the National Highway Traffic Safety Administration, telephone (202) 366–9511. Please identify the relevant collection of information by referring to OMB Clearance Number 2127–0609 "Criminal Penalty Safe Harbor Provision".

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) how to enhance the quality, utility, and clarity of the information to be collected; and

(iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed extension, without change, of a currently approved collection of information:

Criminal Penalty Safe Harbor Provision

Type of Request—Extension, without change, of a currently approved collection.

OMB Clearance Number—2127–0609.

Form Number—This collection of information uses no standard forms.

Requested Expiration Date of Approval—Three (3) years from the date of approval of the collection.

Summary of the Collection of Information—Each person seeking safe harbor protection from criminal penalties under 49 U.S.C. 30170 related to an improper report or failure to report is required to submit the following information to NHTSA: (1) A signed and dated document that identifies (a) each previous improper report and each failure to report as required under 49 U.S.C. 30166, including a regulation, requirement, request or order issued thereunder, for which protection is sought and (b) the specific predicate under which the improper or omitted report should have been provided; and (2) the complete and correct information that was required to be submitted but was improperly submitted or was not previously submitted, including relevant documents that were not previously submitted to NHTSA or, if the person cannot do so, provide a detailed description of that information and/or the content of those documents and the reason why the individual cannot provide them to NHTSA. *See* 49 U.S.C. 30170(a)(2) *and* 49 CFR 578.7. *See also,* 66 FR 38380 (July 24, 2001) (safe harbor final rule) *and* 65 FR 81414 (Dec. 26, 2000) (safe harbor interim final rule).

Description of the Need for the Information and Use of the Information—This information collection was mandated by Section 5 of the Transportation Recall Enhancement, Accountability, and Documentation Act, codified at 49 U.S.C. 30170(a)(2). The information collected will provide NHTSA with information the agency should have received previously and will also promptly provide the agency with correct information to do its analyses, such as, for example, conducting tests or drawing conclusions about possible safety-related defects. NHTSA anticipates using this information to help it to accomplish its statutory assignment of identifying safety-related defects in motor vehicles and motor vehicle equipment and, when appropriate, seeking safety recalls.

Description of the Likely Respondents, Including Estimated Number and Proposed Frequency of Response to the Collection of Information—This collection of information applies to any person who seeks a "safe harbor" from potential criminal liability for knowingly and willfully acting with the specific intention of misleading the Secretary by an act or omission that violates section 1001 of title 18 with respect to the reporting requirements of 49 U.S.C. 30166, regarding a safety-related defect in motor vehicles or motor vehicle equipment that caused death or serious bodily injury to an individual. Thus, the collection of information applies to the manufacturers, and any officers or employees thereof, who respond or have a duty to respond to an information provision requirement pursuant to 49 U.S.C. 30166 or a regulation, requirement, request or order issued thereunder.

We believe that there will be very few criminal prosecutions under section 30170, given its elements. Since the safe harbor related rule has been in place, the agency has not received any reports. Accordingly, it is not likely to be a substantial motivating force for a submission of a proper report. We estimate that no more than one such person a year would invoke this new collection of information, and we do not anticipate receiving more than one report a year from any particular person.

Estimate of the Total Annual Reporting and Recordkeeping Burdens Resulting From the Collection of Information—2 hours.

As stated before, we estimate that no more than one person a year would be subject to this collection of information. Incrementally, we estimate that on average it will take no longer than two hours for a person to compile and submit the information we are requiring to be reported. Therefore, the total burden hours on the public per year is estimated to be a maximum of two hours.

Since nothing in the rule requires those persons who submit reports pursuant to this rule to keep copies of any records or reports submitted to us, recordkeeping costs imposed would be zero hours and zero costs.

Authority: 44 U.S.C. 3506; delegation of authority at 49 CFR 1.50.

Issued on: May 21, 2010.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2010–12664 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 090324348–9655–01]

RIN 0648–XO28

Listing Endangered and Threatened Species: Completion of a Review of the Status of the Oregon Coast Evolutionarily Significant Unit of Coho Salmon; Proposal to Promulgate Rule Classifying Species as Threatened

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), propose to affirm the Endangered Species Act (ESA) status for the Oregon Coast (OC) Evolutionarily Significant Unit (ESU) of coho salmon (*Oncorhynchus kisutch*) by promulgating a rule that will supersede our February 11, 2008, listing determination for this ESU. This proposal will also serve as our announcement of the outcome of a new review of the status of this ESU and request for public comment on the proposal to promulgate the OC coho salmon ESU listing determination. On February 11, 2008, we listed the OC coho salmon ESU as threatened, designated critical habitat, and issued final protective regulations under section the Endangered Species Act (ESA) (February 11, 2008). The ESA listing status of the OC coho salmon ESU has been controversial and has attracted litigation in the past. This listing determination is the result of a settlement agreement. This new listing determination will supersede our February 11, 2008, listing determination for this ESU. Our February 11, 2008, determination establishing protective regulations under the ESA and designating critical habitat for this ESU will remain in effect.

DATES: Information and comments on this proposal must be received by July 26, 2010. A public hearing will be held promptly if any person so requests by July 12, 2010. Notice of the location and time of any such hearing will be published in the **Federal Register** not less than 15 days before the hearing is held.

ADDRESSES: You may submit comments identified by 0648–XO28 by any of the following methods:

- Electronic Submissions: Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Submit written comments to Chief, Protected Resources Division, Northwest Region, National Marine Fisheries Service, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only. Information about the OC coho salmon ESU can be obtained via the Internet at: *http://www.nwr.noaa.gov/* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Northwest Region, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: For further information regarding this proposal, contact Eric Murray, NMFS, Northwest Region, (503) 231–2378; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Previous Federal ESA Actions Related to Oregon Coast Coho Salmon

We first proposed to list the OC coho salmon ESU as threatened under the ESA in 1995 (60 FR 38011; July 25, 1995). Since then, we have completed several status reviews for this species, and its listing classification has changed between threatened and not warranted for listing a number of times. A complete history of this ESU's listing status can be found in our February 11, 2008, final rule (73 FR 7816), classifying this ESU as a threatened species.

To summarize that history, on July 25, 1995 we first proposed to list the ESU as threatened (60 FR 38011). We withdrew that proposal in response to the State of Oregon's proposed conservation measures as described in the Oregon Plan for Salmon and Watersheds (62 FR 24588; May 6, 1997). On June 1, 1998, the U.S. District Court for the District of Oregon found that our determination to not list the OC coho salmon ESU was arbitrary and capricious (*Oregon Natural Resources Council* v. *Daley*, 6 F. Supp. 2d 1139 (D. Or. 1998)). The Court ruled that our decision gave too much weight to conservation measures with an uncertain likelihood of implementation. On August 10, 1998, we issued a final rule listing the OC coho ESU as threatened (63 FR 42587). In 2001, the U.S. District Court in Eugene, Oregon, set aside the 1998 threatened listing of the OC coho salmon ESU (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154, (D. Or. 2001)). The Court ruled that our failure to include certain hatchery fish as part of the ESU was not consistent with the ESA. Subsequently, we announced that we would conduct an updated status review of 27 West Coast salmonid ESUs, including the OC coho salmon ESU (67 FR 6215, February 11, 2002; 67 FR 48601, July 25, 2002).

To aid us in these reviews, we convened a team of Federal scientists, known as a biological review team (BRT). For the OC coho salmon ESU, NMFS concluded that this ESU was not in danger of extinction, but was likely to become endangered in the foreseeable future. The BRT noted considerable scientific uncertainty regarding the future viability of this ESU given unknowns about ocean conditions for coho salmon survival (Good *et al.*, 2005). They also stated that there is uncertainty about whether current freshwater habitats are of sufficient quality and quantity to support the then recent high abundance levels and sustain populations during future downturns in ocean conditions. Considering the BRT's scientific findings and our assessment of risks and benefits from artificial propagation programs included in the ESU, efforts being made to protect the species, and the five factors listed under section 4(a)(1) of the ESA, we proposed to list this ESU as threatened (69 FR 33102; June 14, 2004). In the June 2004 proposed rule, we noted that Oregon was initiating a comprehensive assessment of the viability of the OC coho salmon ESU and of the adequacy

of actions under the Oregon Plan for Salmon and Watersheds for conserving OC coho salmon.

In January 2005, the State of Oregon released a draft OC coho salmon ESU assessment. This assessment concluded that the OC coho salmon ESU was viable and that measures under the Oregon Plan had stopped, if not reversed, the deterioration of OC coho salmon habitats. We published a notice of availability of Oregon's Draft Viability Assessment for public review and comment in the **Federal Register** (70 FR 6840; February 9, 2005) and noted that information presented in the draft and final assessments would be considered in making the final listing determination for the OC coho salmon ESU. We forwarded the public comments we received on Oregon's Draft Viability Assessment, as well as our technical reviews, for Oregon's consideration in developing its final assessment. On May 13, 2005, Oregon issued its final Oregon Coastal Coho Assessment. The final assessment included several changes intended to address concerns raised regarding the sufficiency and accuracy of the draft assessment. The final assessment concluded that: (1) The OC coho salmon ESU was viable under current conditions, and should be sustainable through a future period of adverse environmental conditions (including a prolonged period of poor ocean productivity); (2) given the assessed viability of the ESU, the quality and quantity of habitat was necessarily sufficient to support a viable ESU; and (3) the integration of laws, adaptive management programs, and monitoring efforts under the Oregon Plan for Salmon and Watersheds would maintain and improve environmental conditions and the viability of the ESU into the foreseeable future.

On June 28, 2005 (70 FR 37217), we announced a 6–month extension of the final listing determination for the OC coho ESU, finding that there was substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the listing determination. We solicited additional public comment and information. On January 19, 2006, we issued a final determination that listing the OC coho salmon ESU under the ESA was not warranted (71 FR 3033). As part of this determination, we withdrew the proposed ESA section 4(d) regulations and critical habitat designation for the ESU. In reaching our determination not to list the OC coho salmon ESU, we found that the BRT's slight majority opinion that the ESU is "likely to become endangered" and the conclusion of the Oregon Final Viability Assessment that the ESU was viable represented competing reasonable inferences from the available scientific information and considerable associated uncertainty. The difference of opinion centered on whether the ESU was at risk because of the "threatened destruction, modification, or curtailment of its habitat or range." We conducted an analysis of current habitat status and likely future habitat trends (NMFS, 2005a) and found that: (1) The sufficiency of current habitat conditions was unknown; and (2) likely future habitat trends were mixed (i.e., some habitat elements were likely to improve, some were likely to decline, others were likely to remain in their current condition). We concluded that there was insufficient evidence to support the conclusion that the ESU was more likely than not to become an endangered species in the foreseeable future throughout all or a significant portion of its range.

Our decision not to list the OC coho salmon ESU was challenged by Trout Unlimited. On October 9, 2007, the U.S. District Court for the District of Oregon invalidated our January 2006 decision not to list the OC coho salmon ESU (*Trout Unlimited* v. *Lohn*, *Civ. No. 06—01493ST (D. Or., Oct. 9, 2007*). The Court found that Oregon's viability assessment did not represent the best available science as required by the ESA, and that we improperly considered it in reaching our final listing decision.

In response to the Court's order and pursuant to deadlines established by the Court, we issued a final rule to list the OC coho salmon ESU as threatened, designate critical habitat, and establish protective regulations under section 4(d) of the ESA on February 11, 2008 (73 FR 7816). This decision was challenged by Douglas County, Oregon and others in *Douglas County* v. *Balsiger (Civ. No. 08–01547; D. Or. 2008*). We reached a settlement with the litigants, by which we would again review the status of the OC coho salmon ESU. This proposal announces the results of that review.

ESA Statutory Provisions

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. section 1532(6),(20)). Section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR part 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. We are to make this determination based solely on the best available scientific and commercial information after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species.

We are responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon should be listed as threatened or endangered under the ESA. To identify the proper taxonomic unit for consideration in a salmon listing determination, we apply our *Policy on Applying the Definition of Species under the ESA to Pacific Salmon* (ESU Policy) (56 FR 58612; November 20, 1991). Under this policy, populations of salmon substantially reproductively isolated from other conspecific populations and representing an important component in the evolutionary legacy of the biological species are considered to be an ESU. In our listing determinations for Pacific salmon under the ESA, we have treated an ESU as constituting a DPS, and hence a "species," under the ESA.

When considering protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness, we apply the NMFS--U.S. Fish and Wildlife Service Policy on Evaluating Conservation Efforts ("PECE"; 68 FR 15100; March 28, 2003). In past ESA listing determinations for the OC coho salmon ESU, we have applied the PECE policy when evaluating new conservation efforts. Most of these conservation efforts have been implemented for several years so it is now possible for us to consider the available information about their actual implementation and effectiveness. Where information on program effectiveness is not available, we will not attribute a conservation benefit to the OC coho salmon ESU as resulting from the program.

Species Life History

Coho salmon are a wide-ranging species of Pacific salmon, spawning and rearing in rivers and streams around the Pacific Rim from Monterey Bay in California north to Point Hope, Alaska; through the Aleutian Islands; and from the Anadyr River in Russia south to Korea and northern Hokkaido, Japan (Laufle *et al.*, 1986). From central British Columbia south, the vast majority of coho salmon adults return to spawn as 3–year-olds, having spent approximately 18 months in freshwater and 18 months in salt water (Gilbert, 1912; Pritchard ,1940; Sandercock, 1991). The primary exceptions to this pattern are "jacks," sexually mature males that return to freshwater to spawn after only 5 to 7 months in the ocean. West Coast coho salmon juveniles typically leave freshwater in the spring (April to June) and re-enter freshwater from September to November when sexually mature. They spawn from November to December and occasionally into January (Sandercock, 1991). Coho salmon spawning habitat consists of small streams with stable gravels. Summer and winter freshwater habitats most preferred by young coho salmon consist of quiet areas with low flow, such as backwater pools, beaver ponds, and side channels (Reeves *et al.*, 1989). Since coho salmon spend up to half of their lives in freshwater, the condition of that habitat can have a substantial influence on their survival. In particular, low gradient stream reaches on lower elevation land are important for winter survival of juvenile coho salmon (Stout *et al.*, 2010).

The OC coho salmon ESU covers much of the Oregon coast, from Cape Blanco to the mouth of the Columbia River, an area with considerable physical diversity ranging from extensive sand dunes to rocky outcrops. With the exception of the Umpqua River, which extends through the Coast Range to drain the Cascade Mountains, rivers in this ESU have their headwaters in the Coast Range. Genetic data indicate that OC coho salmon north of Cape Blanco form a discrete group, although there is evidence of differentiation within this area. However, because there is no clear geographic pattern to the differentiation, NMFS has considered coho salmon occupying this area to be a single ESU with relatively high heterogeneity (Weitkamp *et al.*, 1995).

Unlike some West Coast salmon ESUs, OC coho salmon have shown wide fluctuations in abundance and productivity during the last 50 years. Total spawning escapement of naturally produced OC coho held steady through the 1960s at between approximately 45,000 to 150,000 fish (Stout *et al.*, 2010). Spawning abundance declined gradually through the 1970s and 1980s, with all time lows observed in the early 1990s. Preharvest abundance has fluctuated over time, but the overall trend from 1970 through 1999 was strongly negative. Both preharvest and spawning abundance increased from 2000 to 2003, with 50–year highs in spawning abundance observed in 2002 and 2003. Those years also represented the highest preharvest abundance since 1976. With the exception of 2007, spawning abundance from 2001 through 2008 has been higher than any level since 1969, though preharvest abundance has been variable.

Previous Reviews and Biological Review Team Reports

Above we described the ESA listing history of OC coho salmon (Previous Federal ESA Actions Related to Oregon Coast Coho Salmon). For each of the status reviews, consistent with our general practice for other salmonid species, we convened a biological review team (BRT) composed of Federal scientists with expertise in salmon biology, genetics, fishery stock evaluation, marine ecology, or freshwater habitat assessment. The first BRT was convened in 1995 and produced a report detailing its findings (Weitkamp *et al.*, 1995). During the first status review, the BRT found that spawning escapements for the OC coho salmon ESU had declined substantially during the 20th century and natural production was at 5 percent to 10 percent of production in the early 1900s. They noted that productivity and abundance showed clear long-term downward trends. Average spawner abundance had been relatively constant since the late 1970s, but preharvest abundance was declining. Average recruits per spawner were also declining and average spawner-to-spawner ratios were below replacement levels in the worst years. OC coho salmon populations in most major rivers were found to be heavily influenced by hatchery stocks, although some tributaries may have maintained native stocks. Widespread freshwater habitat degradation was noted as a risk factor by the 1995 BRT.

We conducted a second status review of this ESU in 1996. The BRT considered new data on ESU abundance and productivity as well as new analyses on ESU viability based on marine conditions and habitat quality (Nickelson and Lawson, 1998). For absolute abundance, the 1996 total average (5–year geometric mean) spawner abundance of OC coho salmon (44,500) and corresponding ocean run size (72,000) were less than one-tenth of ocean run sizes estimated in the late 1800s and early 1900s, and only about one-third of 1950s ocean run sizes (Oregon Department of Fish and Wildlife, 1995). Long-term trend estimates through 1996 showed that for escapement, run size, and recruits per spawner, trends were negative. The BRT also noted concerns about the influence of hatchery fish and the quality and quantity of habitat available to this ESU.

In 1996, the BRT concluded that, assuming that current conditions continued into the future (and that proposed harvest and hatchery reforms were not implemented), the OC coho salmon ESU was not at significant short-term risk of extinction, but it was likely to become endangered in the foreseeable future. A minority disagreed, and felt that the ESU was not likely to become endangered. The BRT generally agreed that implementation of the harvest and hatchery reforms would have a positive effect on the ESU's status, but they were about evenly split as to whether the effects would be substantial enough to move the ESU out of the "likely to become endangered" category, because of uncertainty about the adequacy of freshwater habitat and trends in ocean survival.

In 2003, we initiated a coast-wide status review of Pacific salmon and steelhead including OC coho salmon. The 2003 BRT (Good *et al.*, 2005) noted several improvements in the OC coho salmon's status as compared to the previous assessment in 1996. For example, adult spawners for this ESU in 2001 and 2002 exceeded the number observed for any year in the past several decades, and preharvest run size rivaled some of the high abundances observed in the 1970s (although well below historical levels), including increases in the formerly depressed northern part of the ESU. Hatchery reforms were increasingly being implemented, and the fraction of natural spawners that were first-generation hatchery fish was reduced in many areas, compared to highs in the early to mid–1990s. On the other hand, the years of good returns just prior to 2003 were preceded by three years of low spawner escapements, the result of three consecutive years of recruitment failure, in which the natural spawners did not replace themselves, even in the absence of any directed harvest. These three years of recruitment failure were the only such instance observed in the entire time series considered. Whereas the increases in spawner escapement

just prior to 2003 resulted in long-term trends in spawners that were generally positive, the long-term trends in productivity as of 2003 were still strongly negative.

For the 2003 conclusions, a majority of the BRT opinion was in the "likely to become endangered" category, with a substantial minority falling in the "not likely to become endangered" category. Although they considered the significantly higher returns in 2001 and 2002 to be encouraging, most BRT members felt that the factor responsible for the increases was more likely to be unusually favorable marine productivity conditions than improvement in freshwater productivity.

Current Review of the OC Coho Salmon ESU

During this new review for the OC coho salmon we convened a new BRT to assist us in carrying out the most recent status review for OC coho salmon. The BRT was composed of Federal scientists from our Northwest and Southwest Fisheries Science Centers and the USDA Forest Service. As part of their evaluation, the BRT considered ESU boundaries, membership of fish from hatchery programs within the ESU, ESU extinction risks, and threats facing this ESU. The BRT evaluated new data on ESU abundance, marine survival, ESU productivity, and spatial structure. They considered the work products of the Oregon/Northern California Coast Technical Recovery Team and information submitted by the public, state agencies, and other Federal agencies. They also considered threats to this ESU, trends in habitat complexity, and potential effects of global climate change.

New Information Available Since the Last OC Coho Salmon ESU Status Review

Since our status review of the OC coho salmon ESU in 2005 (Good *et al.*, 2005), new information is available for consideration. Good *et al.* (2005) analyzed OC coho adult returns through 2003. We now have information on adult returns and marine survival rates through 2009. Also the marking of all hatchery-produced fish and increased monitoring on the spawning grounds have improved our ability to predict the effects of hatchery production on the long-term viability of the ESU.

In addition to the new biological data available, new analyses are available since the 2005 review. These analyses were produced by the Oregon/Northern California Coast Technical Recovery Team (*http://www.nwfsc.noaa.gov/trt/oregonncal.cfm*). This team is one of several technical recovery teams convened in the Pacific Northwest to help us develop recovery plans for ESA-listed salmon and steelhead. These teams are different from BRTs and focus on developing information on historical population structure and ESA technical products to support development of ESA recovery criteria. Technical recovery teams are comprised of Federal, state, and tribal biologists as well as scientists from private consulting firms and academia.

The Oregon/Northern California Coast Technical Recovery Team produced two reports, Identification of Historical Populations of Coho Salmon in the Oregon Coast Evolutionarily Significant Unit (Lawson *et al.*, 2007) and Biological Recovery Criteria for the Oregon Coast Coho Salmon Evolutionarily Significant Unit (Wainwright *et al.*, 2008), which were considered by the BRT in their assessment of this ESU's status. Lawson *et al.* (2007) identified 56 historic populations that function collectively to form the OC coho salmon ESU. Populations were identified as independent, potentially independent, and dependent. This ESU's long-term viability relies on the larger independent and potentially independent populations (Lawson *et al.*, 2007). Dependent populations occupy smaller watersheds and rely on straying from neighboring independent populations to remain viable. Populations were grouped together to form five biogeographic strata-- North Coast, Mid-Coast, Lakes, Umpqua, and Mid-South Coast. Collectively, the five strata form the ESU as a whole.

Wainwright *et al.* (2008) used a decision support system to assess the viability of the OC coho salmon ESU and form the basis of recommended ESA recovery criteria for this ESU. The decision support system is based on the population structure identified by Lawson *et al.* (2007) and builds on concepts developed in that report. It is a computer-based tool that can analyze and compare numerous pieces of data (Turban and Aronson, 2001). The decision support system begins with evaluating a number of primary biological criteria that are defined in terms of logical (true/false) statements about biological processes essential to the persistence or sustainability of the OC coho salmon ESU. These biological criteria include population abundance, diversity, distribution, and habitat quantity and quality. Evaluating these primary criteria with respect to available observations results in a "truth value" in the range from -1 (false) to +1 (true). Intermediate values between these extremes reflect the degree of certainty of the statement given available knowledge, with a value of zero indicating complete uncertainty about whether the statement is true or false. These primary criteria are then combined logically with other criteria at the same geographic scale and then combined across geographic scales (population, strata, and ESU). The end result is an evaluation of the biological status of the ESU as a whole, with an indication of the degree of certainty of that evaluation (Wainwright *et al.*, 2008). The model output describes the likelihood that the ESU is persistent and sustainable. The model predicts the likelihood that the ESU will persist (i.e., not go extinct) over a 100–year time frame. This includes the ability to survive prolonged periods of adverse environmental conditions that may be expected to occur at least once during the 100–year time frame. In the sustainability portion of the analysis, the model predicts the likelihood that the ESU will retain its genetic legacy and long-term adaptive potential into the foreseeable future (foreseeable future is not defined for this criterion), based on the stability of habitat conditions and other factors necessary for the full expression of life history diversity. A detailed description of the decision support system can be found in Wainwright *et al.* (2008) and the new BRT report (Stout *et al.*, 2010).

ESU Boundaries and Hatchery Fish Membership

The BRT evaluated new information related to ESU boundaries, and found evidence that no ESU boundary changes are necessary (Stout *et al.*, 2010). The basis for their conclusion is that the environmental and biogeographical information considered during the first coast-wide BRT review of coho salmon (Weitkamp *et al.*, 1995) remains unchanged, and new tagging and genetic analysis published subsequent to the original ESU boundary designation continues to support the current ESU boundaries. The BRT also evaluated ESU membership of fish from hatchery programs since the last BRT review (Good *et al.*, 2005). In doing so, they applied our Policy on the Consideration of Hatchery-Origin Fish in ESA Listing Determinations (70 FR 37204; June 28, 2005). The BRT noted that many hatchery programs within this ESU have been discontinued since the first review of coast-wide status of coho salmon (Weitkamp *et al.*, 1995). They identified only three programs—the North Fork Nehalem, Trask (Tillamook basin) and Cow Creek (South Umpqua)—that

produce coho salmon within the boundaries of this ESU.

The North Fork Nehalem coho stocks are managed as an isolated harvest program. Natural-origin fish have not been intentionally incorporated into the brood stock since 1986 and only adipose fin clipped brood stock have been taken since the late 1990s. Because of this, the stock is considered to have substantial divergence from the native natural population and is not included in the OC coho salmon ESU. The Trask (Tillamook population) coho salmon stock is also managed as an isolated harvest program. Natural-origin fish have not been incorporated into the brood stock since 1996 when all returns were mass marked. Therefore, this stock is considered to have substantial divergence from the native natural population and, based on our Policy on the Consideration of Hatchery-Origin Fish in ESA Listing Determinations, is not included in the OC coho salmon ESU.

The Cow Creek stock (South Umpqua Population) is managed as an integrated program and is included as part of the ESU because the original brood stock was founded from the local natural-origin population and natural-origin coho salmon have been incorporated into the brood stock on a regular basis. This brood stock was founded in 1987 from natural-origin coho salmon returns to the base of Galesville Dam on Cow Creek, a tributary to the South Umpqua River. Subsequently, brood stock has continued to be collected from returns to the dam, with natural-origin coho salmon comprising 25 percent to 100 percent of the brood stock nearly every year since returning fish have been externally tagged. The Cow Creek stock is probably no more than moderately diverged from the local natural-origin coho salmon population in the South Umpqua River because of these brood stock practices and is therefore considered a part of this ESU.

BRT Extinction Risk Assessment

The BRT conducted an extinction risk assessment for the OC coho salmon ESU considering available information on trends in abundance and productivity, genetic diversity, population spatial structure, and marine survival rates. They also considered trends in freshwater habitat complexity and threats to this ESU, including possible effects from global climate change.

The BRT noted that spawning escapements in some recent years have been higher than the past 60 years. This is attributable to a combination of management actions and environmental conditions. In particular, harvest has been strongly curtailed since 1994, allowing more fish to return to the spawning grounds. Hatchery production has been reduced to a small fraction of the natural-origin production. Nickelson (2003) found that reduced hatchery production led directly to higher survival of naturally produced fish, and Buhle *et al.* (2009) found that the reduction in hatchery releases of Oregon coast coho salmon in the mid–1990's resulted in increased natural coho salmon abundance. Ocean survival, as measured by smolt to adult survival of Oregon Production Index area hatchery fish, generally started improving for fish returning in 1999 (Stout *et al.*, 2010). In combination, these factors have resulted in the highest spawning escapements since 1950, although total abundance before harvest peaked at the low end of what was observed in the 1970s (Stout *et al.*, 2010).

The BRT applied the decision support system of the Technical Recovery Team (Wainwright *et al.*, 2008) to help assess viability and risk level for this ESU. The BRT made a change to the decision support system model and reran the model with data through 2008. This change was to use a different data set to determine the abundance level at which there are so few adult fish on the spawning grounds that they have trouble finding mates (which results in "depensation" or reduced spawning success). Depensation is thought to occur at spawner densities below four fish per mile (Wainwright *et al.*, 2008). The Technical Recovery Team had used "area-under-the-curve" counts for the critical abundance criterion in the decision support system, while the BRT chose to use peak count data. Area-under-the-curve counts (which refers to the total numbers of fish returning over the entire adult run time) are almost always higher than peak counts because they include fish present on the spawning grounds over a longer period of time. Peak counts are simply the highest number of fish observed at any one time. The BRT concluded that peak abundance counts were more likely to capture the potential for depensation because the effect occurs for fish that are on the spawning grounds at the same time (that is, fish need to find mates that are on the spawning grounds at the same time they are).

The BRT's result using the decision support system was 0.09 for ESU persistence. A value of 1.0 would indicate complete confidence that the ESU will persist for the next 100 years, a value of -1.0 would indicate complete certainty of failure to persist, and a value of 0 would indicate no certainty of either persistence or extinction. The BRT therefore interpreted a value of 0.09 as indicating a low certainty of ESU persistence over the next 100 years. The decision support system result for ESU sustainability was 0.21, indicating a low-to-moderate certainty that the ESU is sustainable for the foreseeable future. These results reflect the model's measure of ESU sustainability and persistence under current conditions.

The overall ESU persistence and sustainability scores summarize a great deal of variability in population and stratum level information on viability. For example, although the overall persistence score was 0.09, the scores for individual populations ranged from -1 (Sixes River) to +0.99 (Tenmile Lakes), and approximately half (10/21) of the independent and potentially-independent populations had persistence scores greater than 0.25. The stratum level persistence scores were calculated as the median of the population scores. Only the Lakes stratum had a very high certainty of stratum persistence (0.94), followed by the Mid-South Coast (0.19). The Mid-Coast score for stratum persistence was slightly negative (-0.05). Population sustainability scores ranged from -1.0 in three populations to a high of 0.94 in Tenmile Lake. The stratum scores for sustainability were less variable. Again, the Lakes had the highest score (0.72). North Coast, Mid Coast, and Umpqua had scores indicating a low to moderate certainty of sustainability (0.21 to 0.29), while the Mid-South Coast scored somewhat higher for stratum sustainability (0.50).

The BRT's decision support system scores suggested a higher certainty of sustainability than persistence, a counter-intuitive result. (That is, one would expect a population that has a good chance of maintaining its genetic legacy and long-term adaptive potential for the foreseeable future to also have a good chance of not going extinct in 100 years. In addition, the BRT was concerned that the values for the population functionality criterion are strongly influenced by basin size, and all large populations scored 1.0 regardless of overall habitat quality within the basin. For example, for the largest river system in the ESU, the Umpqua River, all four populations had a functionality score of 1.0, even though the BRT had serious concerns about habitat conditions for these populations. For these and other reasons, the BRT considered other methods of assessing ESU viability and in particular, habitat conditions.

Introduction to Habitat Analysis

The BRT evaluated habitat conditions across the range of the OC coho salmon ESU in two new analyses. An analysis using newly available Landsat images (the Landsat Program is a series of Earth-observing satellite missions jointly managed by NASA and the U.S. Geological Survey) mapped patterns of forest disturbance over the ESU from 1986 to 2008, revealing different rates of disturbance across basins and strata. A second analysis addressed the question "is stream habitat complexity improving?" To answer this question, the BRT quantified stream habitat complexity over the past 10 years from in-stream habitat surveys and analyzed for trends.

Landsat Analysis

Recent public availability of Landsat imagery and the development of tools for analysis have made it possible to analyze disturbance patterns on a fine temporal and spatial scale, allowing a comprehensive, uniform picture of disturbance patterns that was heretofore unavailable. In an analysis conducted for the BRT, satellite annual vegetation maps of the OC salmon ESU from 1986 to 2008 were analyzed for patterns of disturbance. Disturbance in this analysis was removal of vegetative cover, primarily through timber harvest or fire. The scale of resolution of these analyses is approximately 100 meters (328 feet), so individual clear cuts and forest thinning operations were clearly detectable on an annual basis.

The BRT noted that disturbance was wide-spread over the ESU, and varied over space, time, and land ownership. Some river systems experienced higher disturbance than others, with 14 percent to 50 percent of individual basins disturbed since 1986. Rates of disturbance were relatively constant, but the most intense disturbance has moved from Federal (USDA Forest Service and USDI Bureau of Land Management) to private non-industrial lands, presumably in response to policy changes (i.e., implementation of the Northwest Forest Plan).

New Habitat Trend Analysis

The BRT's analysis indicates that the OC coho salmon ESU is in better condition, particularly in terms of total abundance, than it was during the previous status reviews. However, productivity in several recent years was remains below replacement, highlighting the long-standing concern for this ESU that freshwater habitat may not be sufficient to maintain the ESU at times when marine conditions are poor. The BRT noted that the criteria in the decision support system do not meaningfully evaluate freshwater habitat conditions for this ESU. To address this deficiency, the BRT undertook new analyses of habitat complexity across the freshwater habitat of this ESU.

The BRT relied on habitat monitoring data from the ODFW Habitat Monitoring Program. ODFW has been monitoring the wadeable stream (streams that would be shallow enough for an adult to wade across during survey efforts) portion of the freshwater rearing habitat for the OC coho salmon ESU over the past decade (1998 to present) collecting data during the summer low flow period (Anlauf *et al.*, 2009). The goal of this program is to measure the status and trend of habitat conditions throughout the range of the ESU through variables related to the quality and quantity of aquatic habitat for coho salmon: stream morphology, substrate composition, instream roughness, riparian structure, and winter rearing capacity (Moore, 2008). The ODFW habitat survey design is based on 1st through 3rd order streams (USGS 1:100k and ODFW 1:24k). The sampling design is based on a generalized random-tessellation stratified survey (Stevens and Olsen, 2004) that selects potential sample sites from all candidate stream reaches in a spatially balanced manner. The full survey design incorporates a "rotating panel" of sampling sites; 25 percent of the sites are surveyed annually, 25 percent every 3 years, 25 percent every 9 years, and 25 percent new surveys each year. This provides a balanced way to monitor short-term and long-term trends and to evaluate new areas. Due to the availability of these data, the BRT was able to examine trends in habitat complexity over the past 11 years.

In addition, ODFW provided more information to the BRT on the status of aquatic habitats in the OC coho salmon ESU in the form of presentations, comments, and a publication (Anlauf *et al.*, 2009). ODFW analyzed trends in individual stream habitat attributes, including wood volume, percent fine sediments and percent gravel. They analyzed these attributes separately as linear trends by year in the North Coast, Mid-Coast, Umpqua River, and Mid-South Coast strata. They also analyzed winter rearing capacity for juvenile coho salmon with their Habitat Limiting Factors Model (HLFM (version 7)), which integrates habitat attributes. This model emphasizes percent and complexity of pools, and amount of off-channel pools and beaver ponds. In the ODFW/Anlauf *et al.* (2009) HLFM analysis, ODFW used parametric statistical methods to produce a point estimate of habitat condition. They concluded that for the most part, at the ESU and strata scale, habitat for the OC coho salmon has not changed significantly in the last decade. They did find some small but significant trends. For instance the Mid-South Coast sttatum did show a positive increase in winter rearing capacity.

The BRT was concerned that the analysis of trends of individual habitat attributes presented by ODFW/Anlauf *et al.* (2009) does not capture interactions among the various habitat attributes and does not adequately represent habitat complexity. In addition, the HLFM analysis presented by ODFW/Anlauf *et al.* (2009) used monitoring data for sites that had been surveyed only once or twice. The BRT concluded that using sites that had been visited at least three times would enhance their ability to discern trends. To address these concerns, the BRT: (1) asked ODFW to re-run the HLFM using only data from sites that had been surveyed at least three times during the 1998--2008 period, and (2) used the ODFW habitat monitoring data in a model developed by the U.S. Forest Service Aquatic and Riparian Effectiveness Monitoring Program (AREMP) (Reeves *et al.*, 2004; Reeves *et al.*, 2006). For the re-running of the HLFM analysis, ODFW estimated both summer and winter rearing capacity (the ability to predict summer rearing capacity was a new function of the model not available at the time Anlauf *et al.* (2009) prepared their report). In the AREMP model, the BRT used the ODFW monitoring program's data for key wood pieces, residual pool depth and percent fine sediment to generate habitat complexity indicators for stream reaches within populations of the OC coho salmon. Using several models allowed the BRT to compare multiple estimates of stream habitat complexity.

The BRT anticipated that there may be spatial structure in trends of habitat complexity patterns over time due to biogeographic differences present at the scale of strata. For instance, habitat complexity in streams in the Umpqua River basin might be expected to change at a rate different from the streams in the North Coast Basin. This is because the Umpqua Basin is further south and drains part of the Cascade Mountains, while the North Coast streams are at the northern extent of this ESU's range and drain only the Oregon Coastal Mountains. There are biological, geological, hydrological, and precipitation pattern differences that affect stream habitat conditions in these basins. Differences in land-use practices

will also affect changes in habitat complexity over large spatial scales. For example, the Tillamook State Forest has been recovering from a series of fires (the "Tillamook Burn") that burned 355,000 acres (1437 square kilometers) between 1933 and 1951, and little timber harvest has occurred in that area. On the other hand, some areas of the South Coast have experienced ongoing industrial timber harvest over the past 20 years.

In contrast to the analytical method employed by ODFW/Anlauf *et al.* (2009), the BRT applied a Bayesian mixed regression model to estimate rate of change for habitat complexity scores at the stratum, population and site (habitat monitoring trend site) levels. In this analysis, the trends in both the AREMP and HLFM (second run of the model at the BRT's request) data were negative, indicating there is a high likelihood that habitat complexity has declined over the past decade. General patterns among the AREMP channel condition, the HLFM summer rearing capacity, and the HLFM winter rearing capacity were consistent. All three modeling results showed a moderate probability that habitat complexity has declined across the range of this ESU. The North Coast Stratum and Mid-South Coast Stratum showed the strongest and most consistent declines. For the Mid-Coast Stratum, the HLFM showed no trend in summer and winter juvenile rearing capacity, while the AREMP showed moderate decline in channel condition. The biggest difference between model results was observed in the Umpqua River stratum. The AREMP model showed no trend in channel condition, while the HLFM showed a strong decline in summer and winter juvenile rearing capacity. There was no consistent pattern in the differences between model results; in the Mid-Coast Stratum the AREMP showed declines while the HLFM did not. In the Umpqua River Stratum, the HLFM showed declines while the AREMP did not. There were no strong positive trends observed in any stratum. The BRT's analyses indicate that habitat complexity over the ESU has not improved over the past decade. At best, habitat complexity has been holding steady in some areas while declining in others.

Like the ODFW/ Anlauf *et al.* (2009) trend analysis of individual habitat attributes, the BRT's analyses found that habitat complexity across the ESU did not improve over the period of consideration (1998–2008) regardless of the habitat metric chosen for comparison. The ODFW/ Anlauf *et al.* (2009) trend analysis based on individual habitat attributes found no evidence of trends in the Umpqua River or Mid-Coast strata. In the BRT analyses, results from the AREMP channel complexity model do not show a trend up or down in the Umpqua River stratum. However, the HLFM summer and winter rearing capacity analyses (second run of the model conducted at the BRT's request) do show negative trends in the Umpqua River stratum. AREMP channel complexity and HLFM model results for the Mid-Coast Stratum are mixed, with no consistent indication of a trend in either direction.

In the ODFW/Anlauf *et al.* (2009) trend analysis of individual habitat attributes, all of the statistically significant trends in habitat complexity were observed in the North Coast and Mid-South Coast strata (Anlauf *et al.*, 2009). The results for the North Coast Stratum showed a declining trend in sediment and wood volume, but an increase in gravel. The Mid-South Coast Stratum showed an increase in sediment but a decreasing trend in the proportion of gravel. Although the ODFW /Anlauf *et al.* (2009) analysis of individual habitat attributes showed that trends in gravel and sediment in the North Coast and Mid-South Coast strata are in opposite directions, the multivariate AREMP channel condition analysis performed by the BRT found that both North Coast and Mid-South Coast strata showed strong negative declines. While these results may seem contradictory, the observation that individual metrics (ODFW trend analysis) behave differently than integrated, multivariate indicators (AREMP and HFLM analysis) is a key point -- fish habitat is multidimensional, potentially declining even as components such as large wood or sediment increase at different spatial scales.

The ODFW/Anlauf *et al.* (2009) HLFM model run showed an 8.9 percent annual increase in winter rearing capacity in the Mid-South Coast. The BRT's results (including the second running of the HLFM model by ODFW) showed that the Mid-South Coast Stratum had the most certain negative trends for AREMP channel condition and HLFM summer and winter rearing capacity analyses. Compared to the 8.9 percent estimated increase in winter capacity by ODFW/Anlauf *et al.* (2009) for the Mid-South Coast Stratum, the second run of the HLFM summer and winter rearing model estimated a summer capacity decline of 8 percent and a winter capacity decline of 3 percent.

There are several important differences between the BRT analyses and the ODFW/Anlauf *et al.* (2009) analyses. These differences are likely responsible for different conclusions. First, the habitat variables considered in the BRT analyses represented aggregate indices (winter rearing capacity score, summer rearing capacity score, or AREMP Channel Condition score). One portion of the ODFW/Anlauf *et al.* (2009) trend analysis examined trends only in measured individual habitat variables (wood volume, fine sediment, gravel), although the HLFM winter rearing capacity analysis produced an aggregate index. The second difference is that for the HLFM winter rearing capacity analysis, ODFW/ Anlauf *et al.* (2009) utilized the entire suite of sampled sites for wood volume, fine sediment and gravel, and the second run of the HLFM winter and summer rearing capacity analysis used a subset of sites sampled (only those sites that had been sampled 3 times). A third important difference is the model framework used. The BRT analysis was done using Bayesian methods as opposed to the parametric statistical methods employed by ODFW.

In summary, the BRT considered the quality of available freshwater habitat using revised data sets from ODFW. The BRT examined evidence of trends in complexity, with the understanding that an increasing trend would indicate that stream habitat was improving. The BRT found that, for the most part, stream complexity is decreasing. In addition, The BRT examined patterns of disturbance from Landsat images and found that timber harvest activities are continuing in the ESU, with intensity varying among basins. The BRT noted that legacy effects of splash damming, log drives, and stream cleaning activities still affect the amount and type of wood and gravel substrate available and, therefore, stream complexity across the ESU (Miller, 2009; Montgomery *et al.*, 2003). Road densities remain high and affect stream quality through hydrologic effects like runoff and siltation and by providing access for human activities. Beaver (Castor canadensis) activities, which produce the most favorable coho salmon rearing habitat especially in lowland areas, appear to be reduced. Stream habitat restoration activities may be having a short-term positive effect in some areas, but the quantity of impaired habitat and the rate of continued disturbance outpace agencies' ability to conduct effective restoration.

BRT Extinction Risk Conclusions

In order to reach its final extinction risk conclusions, the BRT used a "risk matrix" as a method to organize and summarize the professional judgment of

a panel of knowledgeable scientists with regard to extinction risk of the species. This approach is described in detail by Wainright and Kope (1999) and has been used for over 10 years in our Pacific salmonid and other marine species status reviews. In this risk matrix approach, the collective condition of individual populations is summarized at the ESU level according to four demographic risk criteria: abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viability criteria, outlined in McElhany *et al.* (2000), reflect concepts that are well founded in conservation biology and are generally applicable to a wide variety of species. These criteria describe demographic risks that individually and collectively provide strong indicators of extinction risk. The summary of demographic risks and other pertinent information obtained by this approach is then considered by the BRT in determining the species' overall level of extinction risk. This analysis process is described in detail in the BRT's report (Stout *et al.*, 2010). The scoring for the risk criteria correspond to the following values: 1–very low risk, 2–low risk, 3–moderate risk, 4–high risk, 5–very high risk.

After reviewing all relevant biological information for the species, each BRT member assigns a risk score to each of the four demographic criteria. The scores are tallied (means, modes, and range of scores), reviewed, and the range of perspectives discussed by the BRT before making its overall risk determination. To allow individuals to express uncertainty in determining the overall level of extinction risk facing the species, the BRT adopted the "likelihood point" method, often referred to as the "FEMAT" method because it is a variation of a method used by scientific teams evaluating options under the Northwest Forest Plan (FEMAT 1993). In this approach, each BRT member distributes ten likelihood points among the three species' extinction risk categories, reflecting their opinion of how likely that category correctly reflects the species true status. This method has been used in all status reviews for anadromous Pacific salmonids since 1999, as well as in reviews of Puget Sound rockfishes (Stout *et al.*, 2001b), Pacific herring (Stout *et al.*, 2001a; Gustafson *et al.*, 2006), Pacific hake, walleye pollock, Pacific cod (Gustafson *et al.*, 2000), eulachon (Gustafson *et al.*, 2008) and black abalone (Butler *et al.*, 2008).

For the OC coho salmon ESU, the BRT conducted both the risk matrix analysis and the overall extinction risk assessment under two different sets of assumptions. Case 1: The BRT evaluated extinction risk based on the demographic risk criteria (abundance, growth rate, spatial structure and diversity) currently exhibited by the species, assuming that the threats influencing ESU status would continue unchanged into the future. This case in effect assumes that all of the threats evaluated by the BRT are fully manifest in the current ESU status and will in aggregate neither worsen nor improve in the future. Case 2: The BRT also evaluated extinction risk based on the demographic risk criteria currently exhibited by the species, taking into account predicted changes to threats that were not yet manifest in the current demographic status of the ESU. In effect, this scenario asked the BRT to evaluate whether threats to the ESU would lessen, worsen, or remain constant compared to current conditions. Information gathered by the BRT about current and future threats was evaluated to help guide its risk voting under this scenario.

The risk matrix scores differed considerably for the two cases. When only current biological status was considered (Case 1), the median score for each demographic risk criterion was 2 (low risk) and the mean scores ranged from 2 to 2.47. Current abundance was rated as less of a risk factor than productivity, spatial structure, and diversity. When future conditions were taken into account (Case 2), median scores increased to 3 (moderate risk) for each factor, and mean scores ranged from 2.8 for abundance to 3.27 for productivity. BRT members also separately scored the overall risk associated with threats that they believed were not yet manifest in current demographic criteria (Case 2), and the median score for these threats was 4 (high risk).

The assessment of overall extinction risk for the OC coho salmon ESU also differed substantially depending on what was assumed about the future. When only current biological status was considered (Case 1), the overall assessment was closely split between low risk (49 percent of the likelihood points) and moderate risk (44 percent), with high risk receiving 7 percent of the likelihood points. The BRT's evaluation of risk under this scenario largely reflects the results of the decision support system, which the BRT interpreted as indicating considerable uncertainty about ESU status under current conditions. When the BRT evaluated risk while taking into account future changes to threats (Case 2), the assessment became more pessimistic with 25 percent of the likelihood points falling in low risk, 54 percent in moderate risk, and 21 percent in high risk. The increase in the proportion of the likelihood points in the moderate and high risk categories reflects the BRT's conclusions that, on balance, the threats facing OC coho salmon are likely to grow more severe in the future.

Under the assumption that current conditions continue into the future (Case 1), the BRT's primary concern was that current freshwater habitat conditions may not be able to sustain the ESU in the face of normal fluctuations in marine survival. The BRT noted that the legacy of past forest management practices combined with lowland agriculture and urban development has resulted in a situation in which the areas of highest intrinsic potential habitat capacity are now degraded. The BRT decision was also influenced by its new stream complexity trend analysis and its new Landsat-based forest disturbance analysis. The results of these analyses lend support to the conclusion that the effects of historic and on-going land management activities are still negatively influencing stream habitat complexity.

Like previous BRTs evaluating the status of OC coho salmon, the most recent BRT was also concerned about the long-term downward trend in productivity of this ESU. The BRT noted that natural spawning abundance and total (pre-harvest) adult abundance has increased markedly over the past decade due to a combination of improved ocean survival, lower harvest rates, and reduced hatchery production. However, the BRT was concerned that much of the increase in pre-harvest adult abundance could be attributed to increases in marine survival that are expected to fluctuate naturally, with a smaller proportion of the increase attributable to hatchery and harvest recovery actions (Buhle *et al.*, 2009). The BRT noted that the reduction in risks from hatchery and harvest are expected to help buffer the ESU when marine survival returns to a lower level, likely resulting in improved status compared to the situation a decade ago. On balance, however, the BRT was uncertain about the ESU's ability to survive another prolonged period of low ocean survivals, and this translated into greater concern about the overall risk to the ESU under current conditions.

The BRT was more certain about overall risk status when taking into account predictable changes to the threats facing the population, with a clear majority of the likelihood points falling in the moderate or high risk categories. The BRT was particularly

concerned that global climate change will lead to a long-term downward trend in both freshwater and marine coho salmon habitat compared to current conditions in this ESU. The BRT evaluated the available scientific information on the effects of predicted climate change on the freshwater and marine environments inhabited by OC coho salmon. Although there was considerable uncertainty about the magnitude of most effects, the BRT was concerned that most changes associated with climate change are expected to result in poorer habitat conditions for OC coho salmon than exist currently. Some members of the BRT noted that freshwater effects of climate change may not be as severe on the Oregon coast as in other parts of the Pacific Northwest, and the distribution of overall risk scores reflects this.

In addition to effects due to global climate change, the BRT was also concerned that freshwater habitat for the ESU would continue to degrade from current conditions due to local effects. The BRT noted that despite increased habitat protections on Federal lands with the implementation of the Northwest Forest Plan in the mid–1990s (FEMAT, 1993), timber harvest activities have increased on private industrial lands. The BRT's new habitat analysis indicates that stream habitat complexity has decreased since 1998. Conversion of forests to urban uses was also a concern (e.g., Kline *et al.*, 2001), particularly for the North Coast, mid-south Coast, and Umpqua. The BRT was also concerned that a lack of protection for beaver would result in downward trends for this important habitat forming species. Some BRT members felt that the data indicating that freshwater habitat conditions were likely to worsen from current levels in the future were equivocal, and the distribution of risk matrix and overall threats scores reflects this uncertainty.

The BRT did note some ongoing positive changes that are likely to become manifest in abundance trends for the ESU in the future. In particular, hatchery production continues to be reduced with the cessation of releases in the North Umpqua and Salmon River populations, and the BRT expects that the near-term ecological benefits from these reductions would result in improved survival for these populations in the future. In addition, the BRT expected that reductions in hatchery releases that have occurred over the past decade would continue to produce some positive effects on the survival of the ESU in the future, due to the time it may take for past genetic impacts to become attenuated. The BRT also concluded that stream habitat conditions on Federal land would ultimately improve in the future under the Northwest Forest Plan, even though their analysis indicated an apparent decrease in habitat quality over the last decade. The BRT concluded that, when future conditions are taken into account, the OC coho salmon ESU as a whole is at moderate risk of extinction. The BRT therefore did not need to explicitly address whether the ESU was at risk in only a significant portion of its range.

Consideration of ESA section 4(a)(1) Factors

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Our previous **Federal Register** Notices and BRT reports (Weitkamp et al, 1995; Good *et al.*, 2005), as well as numerous other reports and assessments (ODFW, 1995; State of Oregon, 2005; State of Oregon 2007), have reviewed in detail the effects of historical and ongoing land management practices that have altered OC coho salmon habitat. The BRT reviewed the factors that have led to the current degraded condition of OC coho salmon habitat. We will briefly summarize this information here and direct readers to the BRT report (Stout *et al.*, 2010) for more detail.

Historical and ongoing timber harvest and road building have reduced stream shade, increased fine sediment levels, reduced levels of instream large wood, and altered watershed hydrology. Historical splash damming removed stream roughness elements such as boulders and large wood and in some cases scoured streams to bedrock. Fish passage has been blocked in many streams by improperly designed culverts. Fish passage has been restricted in some estuary areas by tidegates.

Urbanization has resulted in loss of streamside vegetation and added impervious surfaces, which alter normal hydraulic processes. Agricultural activities have removed stream-side vegetation. Building of dikes and levees has disconnected streams from their floodplains and results in loss of natural stream sinuosity. Stormwater and agricultural runoff reaching streams is often contaminated by hydrocarbons, fertilizers, pesticides, and other contaminants. In the Umpqua River basin, diversion of water for agriculture reduces base stream flow and may result in higher summer stream temperatures.

Conversion of forest and agricultural land to urban and suburban development is likely to result in an increase in these effects in the future (Burnett *et al.*, 2007). Loss of beavers from areas inhabited by the OC coho salmon has led to reduced stream habitat complexity and loss of freshwater wetlands. The BRT reports that the amount of tidal wetland habitat available to support coho salmon rearing has declined substantially relative to historical estimates across all of the biogeographic strata (Stout *et al.*, 2010). Instream and off-channel gravel mining has removed natural stream substrates and altered floodplain function.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historical harvest rates of OC coho salmon ranged from 60 percent to 90 percent from the 1960s into the 1980s (Stout *et al.*, 2010). Modest harvest reductions were achieved in the late 1980s, but rates remained high until a crisis was perceived, and most directed coho salmon harvest was prohibited in 1994 (Stout *et al.*, 2010). The Pacific Fishery Management Council adopted Amendment 13 to its Salmon Fishery Management Plan in 1998. This amendment was part of the Oregon Plan for Salmon and Watersheds and was designed to reduce harvest of OC coho salmon. Current harvest rates are based on parental spawner escapements and predicted marine survival and range from minimal harvest (0 to 8 percent) to 45 percent.

A few small freshwater fisheries on OC coho salmon have been allowed in recent years based on the provision in Amendment 13 that terminal fisheries can be allowed on strong populations as long as the overall exploitation rate for the ESU does not exceed the Amendment 13 allowable rate, and that escapement is not reduced below full seeding of the best available habitat. We have approved these fisheries with the condition that the methodologies used by the ODFW to predict population abundances and estimate full seeding levels are presented to the Pacific Fishery Management Council for review and approval.

While historical harvest management may have contributed to OC coho declines, the BRT concluded that the decreases in harvest mortalities described above have reduced this threat to the ESU and that further harvest reductions would not further reduce the risk to ESU persistence.

Disease or Predation

The ODFW (2005), in its assessment of OC coho salmon, asserted that disease is not an important consideration in the recovery of this ESU. However, the BRT

noted that *Nanophyetus salmincola* (a parasitic trematode) may be a source of mortality for juvenile OC coho salmon. Jacobson (2008) reports that annual occurrence of N. salmincola in yearling coho salmon caught in ocean tows off the coast of Oregon were 62--78 percent. Yearling coho salmon had significantly higher intensities of infection and higher infection in natural-origin versus hatchery juveniles, presumably due to the greater exposure to metacercaria (encysted resting or maturing stage of trematode parasites) in natal streams. Occurrence and intensities in yearling coho salmon caught in September were significantly lower (21 percent) than in those caught in May or June in 3 of 4 years. This suggests parasite-associated host mortality during early ocean residence for yearling coho salmon. Pearcy (1992) hypothesized that ocean conditions (food and predators) are important to marine mortality, especially soon after juvenile coho salmon enter the ocean. This is the time period that Jacobson *et al.* (2008) observed the loss of highly infected juveniles. Jacobson hypothesized that high levels of infection may lead to behavioral changes in the fish and thus make the juveniles more susceptible to predation.

Cairns *et al.* (2006) investigated the influence of summer stream temperatures on black spot infestation of juvenile coho salmon in the West Fork of the Smith River, Oregon, a stream system occupied by OC coho salmon. Their studies show that "although other environmental factors may affect the incidence of black spot, elevated water temperature is clearly associated with higher infestation rates in the West Fork Smith River stream network." This may be an important issue for coho salmon juveniles as many of the streams they inhabit are already close to lethal temperatures during the summer months, and, with the expectation of rising stream temperatures due to global climate change, increases in infection rates of juvenile coho by parasites may become an increasingly important stressor both for freshwater and marine survival (Stout *et al.*, 2010).

Parasitism and disease were not considered important factors for decline in previous BRT reviews for OC coho salmon (Weitkamp *et al.*, 1994; Good *et al.*, 2005). However, some information considered by the BRT suggests that they may become more important as temperatures rise due to global climate change and may become important risks for juvenile fish in the early ocean-entry stage of the lifecycle.

The BRT identified several bird species and marine mammals that prey on OC coho salmon, but concluded that these predators are not a significant threat. Salmonids have co-evolved with predators and have survived and remained productive for thousands of years in spite of the large numbers of predators. Because of the abundance and visibility of marine mammal predators on the Oregon coast, and their interactions with fishermen and other users of coastal resources, there is a perception that reducing predation by harbor seals and California sea lions is important for the restoration of OC coho salmon (Smith *et al.*, 1997). However, the BRT listed two sources (Botkin *et al.*, 1995; IMST, 1998) that concluded that predation was a minor threat to the OC coho salmon ESU. Similarly, in their 2005 Oregon State Coho Assessment, the ODFW (State of Oregon, 2005) reported that "natural predation by pinnipeds or seabirds has not been a significant cause in the decline of salmonid stocks at the ESU scale."

The BRT was more concerned about predation on OC coho salmon from introduced warm-water fishes such as smallmouth bass (*Micropterus dolomieu*) and largemouth bass (*Micropterus salmoides*). These predatory fish are especially abundant in the streams and lakes of the Lakes Stratum and the lower Umpqua River. The BRT concluded that predation and competition from exotic fishes, particularly in light of the warming water temperatures from global climate change, could seriously affect the lake and slow-water rearing life history of OC coho salmon by increasing predation.

The Inadequacy of Existing Regulatory Mechanisms

Existing regulations governing ocean and tributary coho salmon harvest have dramatically improved the ESU's likelihood of persistence. These regulations are unlikely to be weakened in the future because they have been developed and negotiated in a comprehensive process by the Pacific Fishery Management Council and the State of Oregon. Many hatchery practices that were detrimental to the long-term viability of this ESU have been discontinued. As the BRT notes in its report, some of the benefits of these management changes are being realized as improvements in ESU abundance. However, trends in freshwater habitat complexity throughout many areas of this ESU's range remain negative (Stout *et al.*, 2010). We remain concerned that regulation of some habitat altering actions is insufficient to provide habitat conditions that support a viable ESU. In the *Efforts Being Made to Protect the Species* section of this document, we present our analysis of the current efforts to protect OC coho salmon freshwater and estuarine habitat.

Other Natural or Manmade Factors Affecting its Continued Existence

Ocean conditions in the Pacific Northwest exhibit patterns of recurring, decadal-scale variability (including the Pacific Decadal Oscillation and the El Nino Southern Oscillation), and correlations exist between these oceanic changes and salmon abundance in the Pacific Northwest (Stout *et al.*, 2010). It is also generally accepted that for at least 2 decades, beginning about 1977, marine productivity conditions were unfavorable for the majority of salmon and steelhead populations in the Pacific Northwest, but this pattern broke in 1998, after which marine productivity has been quite variable (Stout *et al.*, 2010). In considering these shifts in ocean conditions, the BRT was concerned about how prolonged periods of poor marine survival caused by unfavorable ocean conditions may affect the population viability parameters of abundance, productivity, spatial structure, and diversity. OC coho salmon have persisted through many favorable-unfavorable ocean/climate cycles in the past. However, in the past much of their freshwater habitat was in good condition, buffering the effects of ocean/climate variability on population abundance and productivity. It is uncertain how these populations will fare in periods of poor ocean survival when their freshwater, estuary, and nearshore marine habitats are degraded (Stout *et al.*, 2010).

The potential effects of global climate change are also a concern for this species. The BRT noted that there is considerable uncertainty regarding the effects of climate change on OC coho salmon and their freshwater, marine, and estuarine habitat. Their assessment can be found in Appendix C of its report (Stout *et al.*, 2010). Although the BRT used the best information available to predict the possible effects of climate change on this ESU, both the BRT and other authors (Roessig *et al.*, 2004) note that aquatic ecosystems are complex and our understanding of their function is incomplete. Therefore, the BRT's analysis should be considered qualitative in nature and involves some uncertainty. A summary of the BRT's conclusions follows.

A shift to a warmer/drier climate in the Pacific Northwest is generally expected to have negative effects on salmon survival (Mote *et al.*, 2003; Stout

et al., 2010), and some effects have already been observed (ISAB 2007; Crozier *et al.*, 2008; Mantua *et al.*, 2009). Warmer/drier years associated with the warm phase of the El Nino Southern Oscillation or the Pacific Decadal Oscillation lead to below-average snowpack, streamflow, flooding, salmon survival, and forest growth, and above-average forest fire risk (Mote *et al.*, 2003). Similar climate patterns predicted by climate-change models can be expected to have similar effects on salmon (Stout *et al.*, 2010). A number of studies (Francis & Mantua, 2003; ISAB, 2007; Crozier *et al.*, 2008; Mantua *et al.*, 2009) have identified ways by which climate variation or trends influence salmon sustainability, including metabolic costs, disease resistance, shifts in seasonal timing of important life-history events (upstream migration, spawning, emergence, outmigration), changes in growth and development rates, changes in freshwater habitat structure, and changes in the structure of ecosystems on which salmon depend (especially in terms of food supply and predation risk). Salmon are affected throughout their life cycle, including freshwater, estuarine and marine habitats (Stout *et al.*, 2010).

In freshwater habitats, increases in temperature (Mote *et al.*, 2008), decreases in snowpack (Mote *et al.*, 2003; Karl *et al.*, 2009), and alterations in precipitation patterns (Mote *et al.*, 2003) are expected to have direct effects on OC coho salmon freshwater habitat such as increasing stream temperature, altering stream flow patterns, and increasing flood frequency (ISAB, 2007). Indirect effects on freshwater salmon habitat may occur as a result of increased forest fires, decreased tree growth rates, and increased frequency of damaging insect outbreaks (such as the recent mountain pine beetle attacks) (Mote *et al.*, 2003; Peterson *et al.*, 2008; Karl *et al.*, 2009). Climate change may also affect forest composition, which in turn would affect stream habitat across the range of this ESU, although these types of effects cannot be predicted with certainty (Stout *et al.*, 2010).

In addition to potential effects in the freshwater portion of their habitat, changes in ocean conditions as a result of climate change are likely to have a substantial effect on OC coho salmon. Warming sea temperatures and changes in wind patterns may affect upwelling in the Pacific Ocean off the Northwest coast, and upwelling is a main determinant of marine food supply for juvenile salmon. Recent strong El Ninos and other anomalous conditions (such as occurred in summer 2005) may serve as indicators of potential impacts of climate change. In both cases, the spring transition was delayed, surface waters became anomalously warm, and nutrient levels were low, which had implications for the entire marine ecosystem including decreased salmon survival (Brodeur *et al.*, 2005; Emmett *et al.*, 2006; Schwing *et al.*, 2006; Bograd *et al.*, 2009).

Warming sea temperatures may also result in changes in zooplankton communities (Mackas *et al.*, 2007) and northward range expansions of marine predators that may consume OC coho salmon. For instance, in recent years, large numbers of Humboldt squid (*Dosidicus gigas*) have been observed off the coast of Oregon. This potential predator of juvenile salmon is typically not found this far north and may represent a new source of predation on juvenile OC coho salmon.

Ocean acidification caused by climate change may also affect OC coho salmon by altering marine food webs. Increasing atmospheric carbon dioxide is absorbed by the surface layers of the ocean, leading to increased acidity and decreased concentration of carbonate in the ocean (Bindoff *et al.*, 2007; Fabry *et al.*, 2008). Reductions in carbonate have consequences for marine invertebrates, which use carbonate to produce calcite and aragonite shells; this could lead to substantial changes in marine foodwebs (Feely *et al.*, 2004; Fabry *et al.*, 2008).

As with freshwater and open ocean habitats, changes in estuary ecosystems as a result of climate change may also affect OC coho salmon. Rising sea levels, changes in freshwater inputs, and increases in water temperature could lead to shifts in species distributions, changes in community species composition, and changes in biological production (Stout *et al.*, 2010). Warming in estuaries can also be expected to have similar effects on coho salmon as in other habitats: increased physiological stress and increased susceptibility to disease, parasites, and predation (Marine and Cech, 2004; Marcogliese, 2008).

Despite the uncertainties involved in predicting the effects of global climate change on the OC coho salmon ESU, the available information indicates that most impacts are likely to be negative. While individual effects at a particular life-history stage may be small, the cumulative effect of many small effects multiplied across life-history stages and across generations can result in large changes in salmon population dynamics (Stout *et al.*, 2010). In its conclusion on the likely effects of climate change, the BRT expressed both positive and negative possible effects but stressed that when effects are considered collectively, their impact on ESU viability is likely to be negative despite the large uncertainties associated with individual effects.

Efforts Being Made to Protect the Species

Section 4(b)(1)(A) of the ESA requires the Secretary to take into account efforts being made to protect a species when evaluating a species' listing classification (50 CFR 424.11(f)). Because the BRT's extinction risk findings were influenced significantly by predictions about future freshwater and estuarine habitat conditions, we performed a comprehensive analysis of programs that provide protection to OC coho salmon habitat.

Forestry

State Forest Practices Act

Management of riparian areas on private forest lands within the range of OC coho salmon is regulated by the Oregon Forest Practices Act and Rules (Oregon Department of Forestry, 2005b). These rules require the establishment of riparian management areas (RMA) on certain streams that are within or adjacent to forestry operations. The RMA widths vary from 10 feet (3.05 meters) to 100 feet (30.48 meters) depending on the stream classification, with fish-bearing streams having wider RMA than streams that are not fish-bearing.

Logging generally is allowed within the RMA under the Forest Practice rules. The rules specify the types and amount of vegetation that must be retained for various types of streams, and land owners may choose general or site-specific vegetation retention prescriptions as detailed in Oregon Department of Forestry (2005b).

Although the Oregon Forest Practices Act and the Forest Practice rules generally have become more protective of riparian and aquatic habitats over time, significant concerns remain over their ability to fully protect water quality and salmon habitat (Everest and Reeves, 2007; ODF, 2005b; IMST, 1999). In particular, disagreements continue over: (1) Whether the widths of RMAs are sufficient to fully protect riparian functions and stream habitats; (2) whether operations allowed within RMAs will degrade stream habitats; (3) operations on high-risk landslide sites; and (4) watershed-scale effects. Based on the available information, we are unable to conclude that the Oregon Forest Practices Act adequately protects OC coho habitat in all circumstances. On some streams, forestry operations conducted in compliance with this act

are likely to reduce stream shade, slow the recruitment of large woody debris, and add fine sediments. Since there are no limitations on cumulative watershed effects, road density on private forest lands, which is high throughout the range of this ESU, is unlikely to decrease.

State Forest Programs

Approximately 567,000 acres (2295 square kilometers) of forest land within the range of OC coho salmon are managed by the Oregon Board of Forestry (Oregon Department of Forestry, 2005). These lands are divided between Common School Fund lands and Board of Forestry Lands. Most of the Common School Fund lands are located in the Elliot State Forest, and most of the Board of Forestry Lands are located in the Clatsop and Tillamook State Forests. There are also small scattered tracts of both Common School Fund lands and Board of Forestry Lands throughout the range of OC coho salmon. The majority of these lands are managed under the Northwest Oregon Forest Management Plan and the Elliot Forest Management Plan.

These plans are described in detail in Oregon Department of Forestry (2001and 2006). Each plan defines a set of desired riparian conditions, landscape management strategies, aquatic and riparian strategies, guidelines for implementing these strategies, and an adaptive management framework. The plans contain a stream classification system for determining applicable management standards for each stream size/type. More specific protective measures for salmon and riparian areas on the Elliot State Forest can be found in the Elliot State Forest Draft Habitat Conservation Plan (Oregon Department of Forestry, 2008). The Oregon Department of Forestry began pursuing an ESA section 10 habitat conservation plan for the Northwest Oregon State Forests, but has not completed the plan.

Specific standards for forest management within riparian zones are described in the Elliot State Forest Draft Habitat Conservation Plan (Oregon Department of Forestry, 2008). For fish-bearing streams, three management zones exist, the stream bank zone (0--25 feet), inner riparian management zone (25--100 feet) and the outer riparian management zone (100--160 feet). Standards for the stream bank management zone are the most restrictive with no harvest of trees allowed, no use of ground based equipment, and full suspension of logs that are yarded through this zone. The management of forestry activities becomes more permissive as the distance from the stream increases.

We have yet to reach an agreement with Oregon Department of Forestry on completing a Habitat Conservation Plan for the Elliot Forest Habitat Conservation Plan. On July 19, 2009, we notified Oregon Department of Forestry that "we are unable to conclude the strategies would meet the conservation needs of our trust resources and provide for the survival and recovery of Oregon Coast (OC) coho salmon." (Letter from Kim Kratz, NMFS to Jim Young, Oregon Department of Forestry, dated July 19, 2009). We identified concerns over stream shade, woody debris recruitment, and certain other issues that needed be resolved before the Habitat Conservation Plan can be approved. On July 27, 2009, the Oregon Department of Forestry responded, stating that the proposed protective measures "will provide a high level of protection for Oregon's fish and wildlife species and a low level of risk" (Letter from Jim Young, Oregon Department of Forestry, to Kim Kratz, NMFS, dated July 27, 2009). There is still significant disagreement over whether the proposed protective measures are sufficient to conserve OC coho salmon and their habitat. We remain in negotiations with Oregon Department of Forestry over the plan, but it is uncertain how the outstanding disagreements will be resolved. For purposes of this assessment, we are unable to conclude that the state forest management plans will provide for OC coho salmon habitat that is capable of supporting populations that are viable during both good and poor marine conditions. It is likely that some OC coho salmon habitat on state forests will be maintained in its current degraded state, some habitat will be further degraded, and habitat in areas that are not being harvested will recover.

Northwest Forest Plan

Since 1994, land management on Forest Service and Bureau of Land Management (BLM) lands in Western Oregon has been guided by the Federal Northwest Forest Plan (USDA and USDI, 1994). The aquatic conservation strategy contained in this plan includes elements such as designation of riparian management zones, activity-specific management standards, watershed assessment, watershed restoration, and identification of key watersheds (USDA and USDI, 1994). In the short term, this strategy was designed to halt watershed degradation and in the long-term, to provide for a system of healthy, functioning watersheds with good-quality aquatic habitat (FEMAT, 1993). A detailed explanation of the aquatic conservation strategy and its expected benefits to OC coho salmon and their habitat can be found in FEMAT (1993), USDA and USDI (1994), and Oregon State BLM and U.S. Forest Service, Region 6 (2005).

When compared to other aquatic conservation strategies and forest practice rules, the Northwest Forest Plan has large riparian management zones (1 to 2 site potential tree heights) and relatively protective activity-specific management standards (USDA and USDI, 1994). For instance, on fish-bearing streams, the riparian management zone extends approximately 300 feet (91.44 meters) on each side of the stream. Although some timber harvest or pre-commercial thinning could occur in riparian management zones, a comprehensive analysis process known as watershed assessment is required first (USDA and USDI, 1994). Most riparian functions such as maintenance of water temperature, control of sediment, and maintenance of stream banks, will be addressed under this plan (FEMAT, 1993; Everest and Reeves, 2007), although Federal land management agencies have considerable discretion to develop individual forest management actions with varying levels of impacts under the plan. Additional protection for ESA-listed species comes from the ESA requirement for federal land-management agencies to ensure that their actions are not likely to jeopardize listed species or destroy or adversely modify their critical habitats and to evaluate their actions under the National Environmental Policy Act. Unlike many state forest practice rules, the Northwest Forest Plan addresses riparian management at the watershed scale with specific emphasis on maintaining ecosystem functions over the long term (Everest and Reeves, 2007). The plan also goes beyond establishing the absolute minimum set of practices that would meet stated riparian management goals and the concept that goals could be met by implementing yet another set of best management practices (Everest and Reeves, 2007).

Large improvements in watershed condition were not expected immediately after this plan's implementation because many watersheds were extensively degraded and natural systems recover at a slow rate (FEMAT, 1993). Researchers began evaluating how watershed condition had changed after 10 years of plan implementation. Gallo *et al.* (2005) evaluated 250 watersheds within the area covered by the Northwest Forest

Plan during two time periods (1990--1996 and 1998--2003) and found slight improvements in watershed condition between the two periods. Fifty-seven percent of the watersheds had higher condition scores in the second time period than in the first time period. They also found that growth rate of trees exceeded losses to harvest and wildfire, and nine times as many roads were decommissioned as were constructed. Reeves *et al.* (2006) found that watershed condition scores (a method of evaluating the physical characteristics of a watershed likely to facilitate the development of good habitat for native or desirable fish species) improved in 161 of 250 watersheds evaluated, remained the same in 18, and decreased in 71 watersheds. The authors note wildfires burned large portions of many of the watersheds where condition scores had decreased.

These authors conclude that, in general, the condition of watersheds covered by the Northwest Forest Plan has improved, and primary reasons for the improvement include the increase in number of large trees in riparian areas, a decrease in the extent of clear-cutting in riparian zones, and a reduction in the amount of road-building. Additionally, litigation also curtailed forest management activities in many salmon-bearing watersheds during a substantial part of the evaluation period. However, the authors also caution that it is currently unknown if the observed improvements in watershed condition will translate into longer-term improvements in aquatic ecosystems across the broad landscape covered by the plan. The BRT's analysis of stream habitat complexity trends indicates that the observed improvements in watershed condition have yet to be fully realized in actual stream habitat conditions (Stout *et al.*, 2010). After considering the available information, the BRT also concluded that stream habitat conditions on Federal land would ultimately improve in the future under the Northwest Forest Plan, even though its analysis indicated an apparent decrease in habitat quality over the last decade (Stout *et al.*, 2010).

When fully implemented, we also consider the Northwest Forest Plan sufficient to provide for OC coho salmon habitat needs on Federal lands that can contribute to viable populations of OC coho salmon in the future. However, uncertainty exists about the future of aquatic conservation strategies on Federal lands in the Pacific Northwest. The Forest Service has attempted to revise the aquatic conservation strategy for management of its land several times over the last few years but has encountered legal challenges each time. In 2007, the BLM proposed to adopt a new aquatic conservation strategy as part of the Western Oregon Resources Plan (USDI BLM, 2007). On January 11, 2008, NMFS notified the BLM of several concerns about the proposed revisions. NMFS indicated that the plan "does not contain a coherent and cohesive conservation strategy for anadromous fish and their habitat in any of the action alternatives" and "the riparian management scenario proposed in the preferred alternative would not adequately maintain and restore the riparian and aquatic habitat conditions and processes that are critical to the conservation of anadromous fish" (letter from D. Robert Lohn to Edward Shepard, July 11, 2008). The BLM made some changes in response to these comments and later decided to withdraw the proposed plan entirely. Although the Northwest Forest Plan aquatic conservation strategy is the current standard for protection of fish habitat on Federal lands in Oregon, there is some possibility that a less protective plan will be adopted in the future. NMFS is not aware of any effort to strengthen the Northwest Forest Plan's aquatic conservation strategy since its adoption in 1994.

Agriculture

Agricultural Water Quality Program

For agricultural lands, riparian management is governed by agricultural water quality management plans under Oregon Senate Bill 1010 and later area rules. Under these rules, water quality management plans must be developed for streams that are listed as water quality limited under the Federal Clean Water Act. Water quality management plans may also be developed in response to other Federal or state laws such as the Coastal Zone Management Act, Groundwater Management Act, or Safe Drinking Water Act. Within the range of OC coho salmon, water quality management plans have been developed for the Yamhill, North Coast, Mid-Coast, Curry County, and Inland Rogue River basins (Oregon Department of Agriculture, 2005). Once plans are completed, Oregon Administrative Rules (OAR 603–095) are promulgated to provide an enforceable backstop for addressing water pollution from agricultural activities and rural lands.

Specific rules for riparian management vary by basin and are summarized in Oregon Department of Agriculture (2005). The rules are general and open to interpretation. For instance, language similar to the following from the mid-coast plan is found in the other plans "[Riparian] vegetation must be sufficient to provide the following riparian functions: shade, streambank integrity during stream flows following a 25–year storm event, and filtration of nutrients and sediment." Although this type of language identifies the important functions riparian vegetation may provide, there are no measurable standards or specific requirements in any of the riparian rules. This leaves uncertainty for landowners and makes enforcement of these rules difficult. This is reflected in the number of enforcement actions taken from 1998--2004. The Oregon Department of Agriculture reported that nine complaints were made within the range of OC coho salmon during this time period. This resulted in three water quality advisory sessions with the Department of Agriculture, one letter of warning, and no letters of non-compliance or civil penalties (Oregon Department of Agriculture, 2005).

In the past, the Oregon Department of Agriculture enforced the rules only when members of the public made complaints. Since the program does not specify what type of vegetation riparian areas should contain, it is hard for the public to know if and when the rules are being violated. Consequently, complaints were rare. Recent administrative changes now allow staff from the Department of Agriculture to investigate possible violations without complaints from the public. At this point, it is uncertain how many investigations will be initiated by the Department of Agriculture. In the past, the Department has relied on a cooperative approach with landowners, and repeated violations were necessary for enforcement action to take place. With the adoption of the Oregon Plan for Salmon and Watersheds and outreach by the Department of Agriculture, awareness about salmon habitat on agricultural lands has increased. Still, uncertainties exist about how the rules will affect the quality and trend of stream habitat conditions on agricultural lands throughout the range of OC coho salmon.

The riparian rules also exempt levees, dikes, and livestock crossing areas. In some agricultural lands, this may result in only a small portion of a riparian area being excluded from the rules. In other areas, extensive levees or dikes may constrain a stream's floodplain and prevent the development of a healthy riparian plant community and the resulting improvements in instream habitat complexity.

Confined Animal Feeding Operation Program

The Oregon Department of Agriculture issues permits for confined animal feeding operations commonly known as feedlots. This permitting program began in the early 1980s to prevent animal wastes from contaminating groundwater and surface water. The Federal Clean Water Act also requires permitting of confined feedlots in some situations. For many years, the State of Oregon chose not to issue Clean Water Act permits (under the National Pollutant Discharge Elimination System) for confined animal feeding operation wastes because it deemed the state-issued permits to be more restrictive. The state permit program prohibits the discharge of animal wastes to surface waters, while Clean Water Act permits allow such discharges to surface water during large storm events. In 2001, the Oregon State Legislature ordered the Department of Agriculture to begin issuing permits under the Federal Clean Water Act.

The Department of Agriculture carries out an inspection program for confined animal feed operations. From 1998 to 2004, the Department carried out 1,013 inspections and investigated 82 complaints, resulting in the issuance of 92 notices of noncompliance, 175 notices of noncompliance with a plan of correction, and 8 civil penalties (ODA, 2005). It appears as if the Department of Agriculture maintains a fairly robust enforcement program for feedlot operations.

State Pesticide Programs

The Oregon Department of Agriculture's Pesticides Division regulates agricultural, residential, and commercial application of pesticides throughout the state. The U.S. Environmental Protection Agency has designated the Oregon Department of Agriculture to enforce the Federal Insecticide, Fungicide, and Rodenticide Act, as it pertains to pesticides. Oregon also has a Pesticide Control Act (passed in 1973), which, in part, allows the Department of Agriculture to further regulate pesticide use across the entire state or within a specific area (ODA, 2005). The Department of Agriculture regulates pesticide application by licensing certain applicators, requiring pesticides to be registered, and carrying out pesticide compliance monitoring.

Oregon House Bill 3602 required the Department of Agriculture to develop a Pesticide Use Reporting Program. Funding and staffing problems have delayed implementation of this program. The Department reports that this pesticide use reporting will not resume until 2013 (*http://www.oregon.gov/ODA/PEST/purs__index.shtml#PURS__news*). Other Federal and Oregon state laws may require some pesticide use reporting, but this information is not readily available to NMFS, and there is no current method to estimate the amount of pesticides being applied throughout the range of the OC coho salmon.

The Department of Agriculture pesticide program most likely helps reduce the amount of pesticides reaching surface water throughout the range of the OC coho salmon. The licensing program and compliance monitoring help to reduce the amount of pesticides that are applied in a manner that would adversely affect water quality. Unfortunately, we know that many pesticides still end up in surface waters of Oregon (Carpenter *et al.*, 2008; NMFS, 2008). The state programs do not include any specific buffers for the application of pesticides. It is likely that the Federal pesticide registration and labeling program (as described below) may be more important in reducing the amount of pesticides reaching surface waters.

Federal Pesticide Labeling Program

Starting in 2001, a series of legal actions forced the U.S. Environmental Protection Agency to initiate ESA section 7 consultations with NMFS on its registration of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act. As part of a negotiated settlement, the Environmental Protection Agency and NMFS agreed to complete consultation on 37 pesticides that may adversely affect listed salmonids and their critical habitat. This first consultation, completed in November 2008, evaluated three organophosphate pesticides: chlorpyrifos, diazinon, and malathion. In the biological opinion for this consultation, we concluded that the Environmental Protection Agency's proposed registration of the uses (as described by product labels) of all pesticides containing chlorpyrifos, diazinon, or malathion jeopardizes the continued existence of OC coho salmon and adversely modifies their designated critical habitat (NMFS, 2008).

Chlorpyrifos, diazinon, or malathion are toxic to salmonids and their prey at relatively low exposure rates (NMFS, 2008). These chemicals can cause several lethal and sublethal effects, including reduced growth (Allison and Hermanutz, 1977), interference with olfactory function (Scholz *et al.*, 2000), and death from acute exposure (NMFS, 2008). In our biological opinion on their registration, we stated "Given the life history of OC coho salmon, we expect the proposed uses of chlorpyrifos, diazinon, and malathion pesticide products that contaminate aquatic habitats may lead to both individual fitness level consequences and subsequent population level consequences, i.e., reductions in population viability. The widespread uses of these materials indicate substantial overlap with the populations that comprise the OC coho salmon. The risk to this species' survival and recovery from the stressors of the action is high." (NMFS, 2008) We also stated "Chlorpyrifos, diazinon, and malathion are among the most common insecticides found in mixtures. Based on evidence of additive and synergistic effects of these compounds, we expect mortality of large numbers and types of aquatic insects, which are prey items for salmon," and concluded that the proposed action would adversely modify critical habitat for OC coho salmon. This biological opinion provides a reasonable and prudent alternative to the proposed action. This alternative includes adding labeling provisions that prohibit ground application of these chemicals within 500 feet (152.4 meters) of salmonid habitat, aerial application within 1,000 feet (304.8 meters) of salmonid habitat, and when wind speed is greater or equal to 10 miles per hour (16.1 kilometers per hour). This reasonable and prudent alternative has yet to be fully accepted by the Environmental Protection Agency.

Diazinon and chlorpyrifos are being phased out for some non-crop uses but will remain available for some commercial uses and agricultural use, so, the use of these chemicals may decrease slightly in the near future. Malathion is not being phased out in the foreseeable future. We will continue consultation on registration of the remaining pesticides, but since these three organo-phosphate pesticides are among the most toxic to salmon and their prey, it is reasonable to assume that the results of the future consultations will be equally or less restrictive.

Irrigation and Water Availability

The Oregon Water Resources Department has initiated a water right leasing program to mitigate loss of instream flow due to irrigation withdrawals. Water leases provide a mechanism for temporarily changing the type and place of use for a certificated water right to an instream use. In streams where low summer stream flow is a limiting factor for OC coho salmon,

boosting instream flow would improve this habitat. In some cases, leased water can remain instream for a significant distance. In other cases, leased water only remains instream until it reaches the next water user because that water user's water right would be sufficiently large enough to allow them to divert all or a portion of the leased water. Consequently, the protection of instream water rights does not provide certain instream flow for fish and wildlife because virtually all of these existing rights for instream flow have priority dates after 1955 and are fairly junior to other water rights in most basins and therefore do not often affect water deliveries (INR, 2005). Due to these uncertainties, we must conclude that this program provides some local beneficial effects by boosting stream flow, but it is not likely to have population level positive effects in areas where low flow limits OC coho salmon production (i.e., Umpqua River Basin).

Agriculture Summary

Across all populations, agricultural lands occupy approximately 0–20 percent of lands adjacent to OC coho salmon habitat (Burnett *et al.*, 2007). Much of this habitat is considered to have high intrinsic potential (low gradient stream reaches with historically high habitat complexity) but has been degraded by past management activities (Burnett *et al.*, 2007). The state and Federal programs reviewed in this section are partially effective at protecting this habitat. Other programs including the Federal Clean Water Act section 404 and Division of State Lands permitting programs regulate additional activities, such as discharge of fill material in wetlands and water bodies that may occur on agricultural lands (these programs are reviewed in other sections of this Proposed Rule). When considered together, these programs provide a minimal level of protection for OC coho habitat on agricultural lands. Many of the agricultural actions that have the greatest potential to degrade coho habitat, such as management of animal waste, application of toxic pesticides, and discharge of fill material, have some protective measures in place that limit their adverse effects on aquatic habitat. However, deficiencies in these programs limit their effectiveness at protecting OC coho salmon habitat. In particular, the riparian rules of the water quality management program are vague and enforcement of this program is sporadic. The lack of clear criteria for riparian condition will continue to make the requirements of this program difficult to enforce. Levees and dikes can be maintained and left devoid of riparian vegetation regardless of their proximity to a stream. The lack of streamside buffers in the state's pesticide program likely results in water quality impacts from the application of pesticides. Although new requirements from ESA section 7 consultations on pesticide registration may afford more protection to OC coho salmon, these requirements will only apply if the OC coho salmon remains listed. Although a water leasing program is available, there is much uncertainty about how much these programs will actually boost instream flow. The available information leads us to conclude that it is likely that the quality of OC coho salmon habitat on private agricultural lands may improve slowly over time or remain in a degraded state. It is unlikely that, under the current programs, OC coho salmon habitat will recover to the point that it can produce viable populations during both good and poor marine conditions.

Federal Clean Water Act Fill and Removal Permitting

Several sections of the Federal Clean Water act, such as section 401 (water quality certification), section 402 (National Pollutant Discharge Elimination System), and section 404 (discharge of fill into waters of the United States), regulate activities that might degrade salmon habitat. Despite the existence and enforcement of this law, a significant percentage of stream reaches in the range of the Oregon Coast coho salmon do not meet current water quality standards. For instance, many of the populations of this ESU have degraded water quality identified as a secondary limiting factor (ODFW, 2007). Forty percent of the stream miles inhabited by OC salmon ESU are classified as temperature impaired (Stout *et al.*, 2010). Although programs carried out under the Clean Water Act are well funded and enforcement of this law occurs, it is unlikely that programs are sufficient to protect salmon habitat in a condition that would provide for viable populations during good and poor marine conditions.

Gravel Mining

Gravel mining occurs in various areas throughout the freshwater range of OC coho salmon but is most common in the South Fork Umpqua, South Fork Coquille, Nehalem, Nestucca, Trask, Kilchis, Miami, and Wilson Rivers. The U.S. Army Corps of Engineers frequently issues permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act for gravel mining in rivers in the southern extent of the OC coho salmon's range. Although gravel mining activities occur within rivers at the northern extent of this ESU's range, such as the Nehalem River, the Corps of Engineers does not always issue permits for these activities. Although the gravel mining occurring in the northern and southern portions of this ESU's range uses similar methods to collect the material, it is unclear why fewer permits are issued in the northern portion of this ESU's range. The Oregon Department of State Lands issues similar permits under both the Removal-Fill Law and the State Scenic Waterway Law.

Improperly managed gravel mining may adversely affect OC coho salmon habitat, particularly in systems where substrate recruitment patterns have been altered. River channel deepening through substrate removal may reduce the available important low velocity, shallow water rearing habitats. This type of habitat can be particularly important for juvenile coho salmon in lower river and estuary areas (Bottom and Jones, 1990; Dawley *et al.*, 1986). McMahon and Holtby (1992) found coho smolts sought cover as they migrated through the estuary. Gravel mining can result in a deeper and less complex streambed which would not provide these refuge areas.

Gravel mining can also alter salmonid food webs by eliminating shallow water habitat, where food webs are based on substrate or emergent marsh vegetation and infauna (Bottom and Jones, 1990; Dawley *et al.*, 1986). These food webs are more likely to directly support salmonid productivity than ones in large open channels (Bottom *et al.*, 1984; Salo, 1991). For substrate-oriented macroinvertebrates, the highest abundance is produced by well-graded mixtures of gravel and cobble, with poorly-graded mixtures of sands and silts or boulders and bedrock producing the lowest abundance (Reiser, 1998). In particular, the significant taxonomic groups for salmonid food sources, including insects in the orders Ephemeroptera (mayflies), Plecoptera (stoneflies), and Trichopetera (caddisflies), show preferences for small to large-sized gravels rather than coarse or fine sands. Direct removal of aquatic vegetation or elimination of shallow water habitats will also reduce the abundance of vegetation-oriented macroinvertebrates easten by juvenile salmon such as ants (*Formicidae*) and grasshoppers (*Caelifera*).

Removal of riverbed substrates may also alter the relationship between sediment load and shear stress forces and increases bank and channel erosion. This disrupts channel form, and can also disrupt the processes of channel

formation and habitat development (Lagasse *et al.*, 1980; Waters, 1995). Operation of heavy equipment in the river channel or riparian areas can result in disturbance of vegetation, exposure of bare soil to erosive forces, and spills or releases of petroleum-based contaminants. Dredging and excavation activities have the potential to resuspend embedded contaminants or unearth buried contaminants adhered to sediment and soil particles.

Management and removal of stream substrates has been a concern in some rivers that provide habitat for OC coho salmon. On August 6, 2004, NMFS issued a jeopardy conference opinion under section 7 of the ESA on the issuance of a permit under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act for gravel mining in the Umpqua River between rivermile 18 and 25 (NMFS, 2004). This action subsequently ceased, but gravel mining in the South Fork Umpqua River remains a concern. In 2005, we issued a draft conference opinion that concluded that proposed gravel mining in the South Fork Umpqua River was likely to jeopardize the continued existence of OC coho salmon and would result in the destruction or adverse modification of their critical habitat (letter from Michael Crouse, NMFS to Larry Evans, Corps of Engineers dated May 29, 2007). NMFS also recommended, under the Fish and Wildlife Coordination Act and Magnuson-Stevens Fishery Conservation and Management Act, that the permit for this proposed action be denied. Similarly, we recommended under the Magnuson-Stevens Fishery Conservation and Management Act, that the volume of gravel being removed from the Lower Umpqua River be limited and the method of removal restricted to a manner that will protect the geomorphology of the river (NMFS, 2006).

Although the Corps of Engineers and Department of State Lands carry out programs to regulate gravel mining, recent ESA and MSA consultations indicate that, in some cases, additional measures are needed to provide for OC coho salmon habitat capable of producing viable populations during good and poor marine conditions.

Habitat Restoration Programs

The Oregon Watershed Enhancement Board funds and facilitates habitat restoration projects throughout the range of the OC coho salmon. Many of these projects occur on private land and are planned with local stakeholder groups known as watershed councils. Biologists and restoration specialists from state, Federal and tribal agencies often assist in the planning and implementation of projects. Habitat restoration projects funded by the Oregon Watershed Enhancement Board include installation of fish screens, riparian planting, placement of large woody debris, road treatments to reduce sediment inputs to streams, wetland restoration, and removal of fish passage barriers (Oregon Watershed Enhancement Board, 2009). The web-based Oregon Watershed Restoration Inventory (*http://www.oregon.gov/OWEB/MONITOR/OWRI__data.shtml*) and the North Coast Explorer (*http://www.northcoastexplorer.info/*) systems provide detailed information on restoration projects implemented within the range of OC coho salmon. We also maintain the Pacific Northwest Salmon Habitat Project Database (*http://webapps.nwfsc.noaa.gov/pnshp*) to track salmon habitat restoration projects. Douglas County provided information on several habitat restoration projects completed within the Umpqua River Basin. In addition to state and private efforts, the Forest Service and Bureau of Land Management carry out restoration projects on Federal lands (USDA and USDI, 2005).

The BRT conducted an analysis to determine if recent habitat restoration projects are being located to address habitat need. The results indicate that restoration projects in broad areas of the ESU are well matched to the needs of the specific basins, but in a few areas on the North Coast and most of the Umpqua River basin, the projects' match is marginal or worse, indicating a need for coordination between those doing habitat assessments and those designing and implementing restoration projects (Stout *et al.*, 2010).

Beaver Management

Beavers were once widespread across Oregon. There is general agreement that beavers are a natural component of the aquatic ecosystem and beaver dams provide ideal habitat for overwintering coho salmon juveniles (ODFW, 1997). Currently, beavers in Oregon are classified as nuisance species, so there is no closed season or bag limit. They may be killed at any time they are encountered. Oregon also maintains a trapping season for beavers. The ODFW is currently investigating possible ways to protect beavers and their dams throughout the range of OC coho salmon. All of the current protective efforts are voluntary, and there is low certainty they will be fully implemented.

Proposed Determination

Section 4(b)(1) of the ESA requires that a listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species. We have reviewed the information received during the public comment period we announced at the beginning of this review process, the report of the BRT (Stout *et al.*, 2010) and other information available on the biology and status of the OC coho salmon ESU. Based on this review, we conclude that there is no new information to indicate that the boundaries of this ESU should be revised or that the ESU membership of existing hatchery populations should be changed.

Ongoing efforts to protect OC coho salmon and their habitat, as described in the previous section, are likely to provide some benefit to this ESU. Considered collectively, however, these efforts do not comprehensively address the threats to the OC coho salmon ESU from ongoing and future land management activities and global climate change.

Based on the best scientific and commercial information available, including the BRT report, we determine that the OC coho salmon ESU is not presently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. Factors supporting a conclusion that this ESU is not presently in danger of extinction include: (1) although abundance has declined from historical levels, this ESU remains well distributed throughout its historical range from just south of the Columbia River to north of Cape Blanco, Oregon; (2) each one of the five strata comprising this ESU contains at least one relatively healthy population; (3) threats posed by overharvest and hatchery practices have largely been addressed; and (4) spawning escapement levels have improved considerably in recent years.

Factors supporting a conclusion that the DPS is likely to become in danger of extinction in the foreseeable future include: (1) although the results of the BRT's decision support system analysis indicate a low to moderate certainty that the ESU is sustainable, the results indicate a low certainty that the ESU will persist over the next 100 years; (2) habitat complexity in streams throughout the range of this ESU is either static or declining (Stout *et al.*, 2010); (3) current protective efforts are

insufficient to provide for freshwater habitat conditions capable of producing a viable ESU; and (4) global climate change is likely to result in further degradation of freshwater habitat conditions and poor marine survival. Therefore, we propose to retain the threatened listing for the OC coho salmon ESU by repromulgating the rule classifying the ESU as threatened. This proposed rule would supersede our 2008 rule listing the species as threatened.

Prohibitions and Protective Measures

Section 9 of the ESA prohibits the take of endangered species. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19). In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) "take" prohibitions to the species, and authorizes us to issue regulations it considers necessary and advisable for the conservation of the species. On February 11, 2008, we issued final protective regulations under section 4(d) of the ESA for the OC coho salmon ESU (73 FR 7816). The new information that we evaluated in this current review of the status of the OC coho ESU does not alter our determinations regarding those portions of our February 11, 2008 rule establishing ESA section 4(d) protections for the species. Accordingly, we do not proposed changing those protective regulations and they remain in effect.

Other Protective ESA Provisions

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS or the FWS, as appropriate. Examples of Federal actions likely to affect salmon include authorized land management activities of the Forest Service and the BLM, as well as operation of hydroelectric and storage projects of the Bureau of Reclamation and the U.S. Army Corps of Engineers. Such activities include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Federal actions, including the U.S. Army Corps of Engineers section 404 permitting activities under the Clean Water Act, permitting activities under the River and Harbors Act, Federal Energy Regulatory Commission licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation. We have a long history of consultation with these agencies on the OC coho salmon ESU.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. We have issued section 10(a)(1)(A) research/enhancement permits for currently listed ESUs for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research that may incidentally take listed species, the implementation of state fishing regulations, logging, road building, grazing, and diverting water into private lands. These "Other Protective ESA Provisions" of the February 11, 2008 rule remain in effect.

Critical Habitat

Section 4(a)(3) of the ESA requires that, to the extent practicable and determinable, critical habitat be designated concurrently with the listing of a species. Designation of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat.

On February 11, 2008, we designated critical habitat for the OC coho salmon ESU (73 FR 7816). The new information that we evaluated in this current review of the status of the OC coho ESU does not alter our determinations regarding those portions of our February 11, 2008 rule designating critical habitat for the species. Accordingly, we do not propose changing the critical habitat designation which remains in effect.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106--554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. Pursuant to the OMB Bulletin, we are obtaining independent peer review of the draft BRT report; all peer reviewer comments will be considered prior to dissemination of the final report and publication of the final rule.

Public Comments Solicited

To ensure that the final action resulting from this proposed rule will be as accurate and effective as possible, and informed by the best available scientific and commercial information, NMFS is soliciting information, comments, and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties. Specifically, we are interested in information that we have not considered regarding: (1) assessment methods to determine this ESU's viability; (2) this ESU's abundance, productivity, spatial structure, or diversity; (3) efforts being made to protect this ESU or its habitat; (4) threats to this ESU; and (5) changes to the condition or quantity of this ESU's habitat.

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d

825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (See NOAA Administrative Order 216—6).

Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13175, Consultation and Coordination with Indian Tribal Governments

E.O. 13175 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal Government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This proposed rule is unlikely to result in direct costs to Native American Tribes due to the following: (1) this ESU has been listed for 15 years, and in our experience, there have been few, if any, direct costs to Tribes, (2) section 7 of the ESA requires that Federal agencies consult with NMFS on the effects of actions they fund, authorize, or carry out; there is no requirement for Tribes to do so, and (3) there are no large reservations within the range of this ESU, so Federal actions that may affect Tribes occur infrequently. Accordingly, the requirements of section 5(b) of E.O. 13175 do not apply to this final rule. Nonetheless, we will continue to inform potentially affected tribal governments, solicit their input, and coordinate on future management actions.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). We have determined that this proposed rule is a policy that does not have federalism implications. Consistent with the requirements of E.O. 13132, recognizing the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, and in keeping with Department of Commerce policies, the Assistant Secretary for Legislative and Intergovermental Affairs will provide notice of this proposed rule and request comments from the State of Oregon.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: May 18, 2010.

Eric Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9) *et seq.*

2. In § 223.102, revise paragraph (c) (24) to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

Species			Where Listed	Citation (s) for Listing Determinations	Citations (s) for Critical Habitat Designations
Common name		Scientific name			
* * *		*	*	*	*
(c) * * *					
(24) Oregon Coast Coho		*Oncorhynchus kisutch*	U.S.A., OR, all naturally spawned populations of coho salmon in Oregon coastal streams south of the Columbia River and north of Cape Blanco, including the Cow Creek (ODFW stock #37) coho hatchery program	73 FR 7816; Feb 11, 2008; [*Insert FR citation and date when published as a final rule*]	73 FR 7816; Feb 11, 2008
* * *		*	*	*	*

[1]Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

[FR Doc. 2010–12635 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 75, No. 101
Wednesday, May 26, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 21, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Annual Wildfire Report.

OMB Control Number: 0596–0025.

Summary of Collection: The Cooperative Forestry Assistance Act of 1978 (U.S.C. 2101) requires the Forest Service (FS) to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The program provides supplemental funding for State and local fire fighting agencies. The FS works cooperatively with State and local fire fighting agencies to support their fire suppression efforts. FS will collect information using form FS 3100–8, Annual Wildfire Summary Report.

Need and Use of the Information: FS will collect information to determine if the Cooperative Fire Program funds, provided to the State and local fire fighting agencies have been used by State and local agencies to improve their fire suppression capabilities. The information collected will be share with the pubic about the importance of the State and Private Cooperative Fire Program. FS would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program if the information provided on FS–3100–8, were not collected.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 56.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 28.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–12652 Filed 5–25–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 20, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: On-line Registration for FSA-sponsored Events and Conferences.

OMB Control Number: 0560–0226.

Summary of Collection: The collection of information is necessary for people to register on-line to make payment and reservation to attend Farm Service Agency (FSA) sponsored events and conferences. The respondents will need to submit the information on-line to pay and to make reservations prior to attending any conferences and events. Respondents that do not have access to the Internet can register by mail or fax.

Need and Use of the Information: FSA will collect the name, organization, organization's address, country, phone

number, State, payment options and special accommodations from respondents. FSA will use the information to get payment, confirm and make hotel and other necessary arrangements for the respondents.

Description of Respondents: Individuals or households; Farms: Business or other for-profit; Federal government, Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 900.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Farm Service Agency

Title: Procurement of Commodities for Foreign Donation.

OMB Control Number: 0560–0258.

Summary of Collection: 7 CFR part 1496, Procurement of Processed Agricultural Commodities for Donation under Title II, Public Law 480 is the authorizing authority. The Kansas City Commodity Office (KCCO), within the Farm Service Agency (FSA), U.S. Department of Agriculture, procures agricultural commodities on behalf of the Commodity Credit Corporation (CCC) for donation overseas under various food aid authorities. The information collection is needed in the evaluation of freight bids in connection with the procurement of commodities for donation overseas. This information is submitted by ocean carriers, or their agents, and collected by the KCCO.

Need and Use of the Information: The United States donates agricultural commodities overseas to meet famine or other relief requirements, to combat malnutrition, and sells or donates commodities to promote economic development. To accommodate these donations, the CCC issues invitation to purchase agricultural commodities and services, such as transportation, for use in international programs. Vendors bid for ocean freight by making offers using the Freight Bid Entry System to place bids electronically.

Description of Respondents: Business or other for-profit.

Number of Respondents: 15.

Frequency of Responses: Reporting: Weekly.

Total Burden Hours: 24.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–12601 Filed 5–25–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF COMMERCE

Census Bureau

The 2010 Census Count Question Resolution Program

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before July 26, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Christa D. Jones, Assistant Division Chief, Count Question Resolution Office, Room 3H061, Decennial Management Division, U.S. Census Bureau, Washington, DC 20233. Telephone: 301–763–7310; FAX: 301–763–8327 or e-mail: *dmd_cqr@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Count Question Resolution (CQR) program will address corrections for three types of challenges for the 2010 Decennial Census: (1) Boundary, (2) geocoding, and (3) coverage. The CQR program is not a mechanism or process to challenge or revise the population counts sent to the President by December 31, 2010, which are used to apportion the U.S. House of Representatives. The Census Bureau will accept challenges between June 1, 2011, and June 1, 2013. The Census Bureau will review challenges in the order they are received.

The CQR program procedures include researching challenges and, as appropriate, making corrections and issuing revised official population and housing unit counts, which the Census Bureau will also use for the Census Bureau's Population Estimates program. The Census Bureau will not accept challenges to the overseas counts of persons in the military and Federal civilian personnel stationed overseas and their dependents living with them. The Census Bureau obtains overseas counts using administrative records and uses the records solely for apportioning seats in the U.S. House of Representatives. These records do not provide the sub-State geographic information required for the CQR program.

The Census Bureau will only accept challenges from the highest elected official of State, local, and Tribal area governments or those representing them or acting on their behalf. All challenges must be sent to the Census Bureau's headquarters.

The Census Bureau will make all corrections on the basis of appropriate documentation provided by the challenging entities and through research of the official 2010 Census records by the Census Bureau. The Census Bureau will not collect additional data for the enumeration of living quarters through the CQR program. The Census Bureau will respond to all challenges and will notify all affected governmental units of any corrections to their official counts as a result of a CQR program decision.

Corrections made to the population and housing unit counts by this program will result in the issuance of new official 2010 Census counts to the officials of governmental units affected. These corrections may be used by the governmental units for future programs requiring official 2010 Census data. The Census Bureau will use these corrections to:

—Specifically modify the decennial census file for use in annual postcensal estimates beginning in December 2012, and

—Create the errata information we will make available on the Census Bureau's *American FactFinder* Web site at *http://factfinder.census.gov.*

The Census Bureau will NOT incorporate the CQR corrections into 2010 data summary files and tables prepared after the CQR process begins nor will the Census Bureau re-tabulate Summary File 1 or Demographic Profile tables.

Background

The Census Bureau has a comprehensive program to improve the quality of the housing unit and population counts. In 2002, the Census Bureau initiated the Master Address

File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) Accuracy Improvement Project (MTAIP) as part of the MAF/TIGER Enhancements Program (MTEP). This project acquired geographic information system (GIS) files, aerial photography, and GPS data from various sources nationwide to update the TIGER database. One of the primary goals of the project was to develop a highly accurate geographic database of the United States, Puerto Rico, and the Island Areas. The Census Bureau focused on improving the accuracy of street feature coordinates to provide base information suitable for use with GPS-equipped hand-held devices that would facilitate the gathering of accurate location and census information for all living quarters and workplaces.

The Census Bureau implemented a number of address list development programs in preparation for the 2010 Census, the earliest of which was the Local Update of Census Addresses (LUCA) program that started in 2007. Participating State, local and Tribal area governments were given the opportunity to review and update the Census Bureau's address list of living quarters before it was used for the actual census enumeration. In cases where the State, local, or Tribal area government and the Census Bureau could not agree on the address list, the governmental unit could use an appeal process administered by the LUCA Appeals Office, which was set up by the Office of Management and Budget to provide an independent adjudication. The full LUCA operation included participant review of materials from November 2007–March 2008; Census Bureau Address Canvassing field work from March–July 2009; LUCA Detailed Feedback to participants from October–November 2009; and the LUCA Appeals process which concluded at the end of March 2010. In addition to LUCA, governmental units with city-style address areas had another opportunity to update the 2010 Census address list via the New Construction program, which occurred from November 2009–March 2010. Between 2009 and 2010, the Census Bureau conducted the Boundary Validation Program. This program provided highest elected officials and Tribal chairpersons with maps that showed boundaries of their respective jurisdictions and instructed them how to make boundary corrections.

From September–October 2009, the Census Bureau also conducted the Group Quarters Validation and Reinterview operations to verify or correct address records identified as group quarters. From March through April 2010, the Census Bureau conducted the Enumeration at Transitory Locations operation that was designed to enumerate eligible populations living in transitory locations such as campgrounds and marinas. After the development of the 2010 Census mailing list, a number of situations occurred requiring the Census Bureau to implement an additional mail delivery. This was referred to as the Mail Delivery for Late Adds and included city-style addresses from the LUCA appeals, Census Bureau research of ungeocoded addresses in the Master Address File, and additional self-response from the spring 2010 Delivery Sequence File update from the U.S. Postal Service. The Mail Delivery for the Late Adds operation reduced the number of addresses included in the Nonresponse Follow-up (NRFU) Vacant Delete Check operation.

Between April and August 2010, the Coverage Follow-up (CFU) operation will improve the 2010 Census by calling households that are identified as having a potential error in their household count. From July through August 2010, the NRFU Vacant Delete Check operation verified the vacant and delete assessments of census workers. Vacant Delete Check also enumerates housing units that census workers inaccurately classified as vacant or nonexistent in an earlier census operation. It also enumerated added housing units discovered in an earlier census operation such as those added or reinstated through the 2010 LUCA appeals process; records added from the Housing Unit Address Review conducted as part of the Count Review operation; records added as a result of research into potentially missed addresses in Address Canvassing (as reported on internal documents known as INFO–COMMs); previously ungeocoded addresses which obtained geocodes from the Census Bureau research of ungeocoded addresses in the Master Address File; new addresses from periodic postal updates; records added by Update/Leave; and addresses provided in the New Construction operation by Tribal and local governments.

In August through early September 2010, the Census Bureau will conduct the Field Verification operation. The Field Verification operation is a final check for certain address records from sources such as Be Counted, Telephone Questionnaire Assistance (TQA), Group Quarters Enumeration, questionnaire fulfillment and TQA interview, as well as particular categories of housing-level cases identified through person matching for the CFU operation. Data collection for the 2010 Census ended in the Local Census Offices in September 2010. The Census Bureau strictly enforces the schedule to allow the time to produce the State-level apportionment counts by December 31, 2010, as required by law.

Relevant 2010 Census Data Releases

The Redistricting Data (Pub. L. 94–171) are scheduled for release from February through March 2011. In May 2011, the Census Bureau will release an advance tabulation of group quarters population and type to the public through a file transfer protocol site. This "Advance Release of Group Quarters Data from Summary File 1" will include block-level Group Quarters (GQ) population counts by GQ type. The Demographic Profile table, which contains selected population and housing characteristics, will also be released in May 2011. The release of Summary File 1 (SF1) on a flow basis to States will occur between June and August 2011. The SF1 will contain block-level housing unit and group quarters population counts. Collectively, these census data products will provide participants with appropriate tools for accessing the accuracy of their decennial census counts.

State, local, and Tribal area government officials must contact the Census Bureau CQR Office in order to initiate the challenge process. The Census Bureau will also accept challenges on official jurisdictional letterhead from county clerks, city planners, local planning board representatives, and State legislative representatives with redistricting functions within each State and State equivalents who are acting on the behalf of a local or Tribal jurisdiction to submit a challenge.

Types of Challenges Considered for the 2010 Census CQR Program

The 2010 Census CQR program may make corrections as a result of the following three types of challenges:

(1) *Boundary*—The CQR program may address the inaccurate reporting or the inaccurate recording of boundaries legally in effect on January 1, 2010. The Census Bureau needs to ensure that the geographic assignment information provided by governmental units does not, in fact, reflect boundary changes made after January 1, 2010.

(2) *Geocoding*—These challenges affect placement of living quarters and associated population within the correct

governmental unit boundaries and census tabulation blocks.

(3) *Coverage*—These challenges, if upheld by the Census Bureau, result in the addition or deletion of specific living quarters and persons associated with them identified during the census process, but are erroneously included as duplicates or excluded due to processing errors.

Challenges That Result in Corrections

The Census Bureau will issue corrected CQR counts based on the housing unit and population counts as of April 1, 2010. The governmental units may use new official census counts for all programs requiring official 2010 Census data. The Census Bureau will not make corrections to the data concerning the characteristics of the population and housing inventory. The Census Bureau will modify the decennial file reflecting the corrected counts for generating the 2012 postcensal estimates. The American FactFinder will provide the inventory of corrections as errata to the original data. The Census Bureau will not revise 2010 Census base files, 2010 Census apportionment counts, redistricting data, or 2010 Census data products. The governmental units may use new official Census counts for all programs requiring official 2010 Census data. The Census Bureau will send a letter with a certification of the population and housing for all jurisdictions affected by the results of a successful CQR challenge.

Challenges That Do Not Result in Corrections

When a State, local, or Tribal area government provides evidence that the Census Bureau missed housing units or group quarters that existed on April 1, 2010, but the CQR research and 2010 Census records show that all of the Census Bureau's boundary information, geocoding, and processing were correctly implemented, the Census Bureau will respond by sending a letter to the official or his/her representative stating that the Census Bureau will maintain the documentation for consideration in the context of address list updating activities in the future but will not issue a revised count.

Internal Census Bureau Review

The primary internal review process for the 2010 Census counts is the Count Review program. This program started in February 2010, with Census Bureau staff and members of the Federal-State Cooperative Program for Population Estimates (FSCPE) working together to review address lists and identify clusters of missing housing unit addresses. The Count Review program also includes Census Bureau staff review of population and housing unit count totals prior to the release of the data. In August 2010, the FSCPE representatives will review the 2010 Census group quarters population counts.

Findings from the Count Review program may result in cases for the CQR program if there is insufficient time to make corrections before the end of the Count Review operation. The Count Review program staff will create internal CQR challenges for all unresolved issues within the scope of the CQR program. The Census Bureau may make count corrections as result of this internal review and include them in the CQR process. In cases where the Census Bureau makes changes to the housing unit and/or population counts, new official counts will be issued to the affected jurisdictions, and the results will be included in the same file as CQR external cases. However, the Census Bureau will not make changes to the 2010 Census data products due to a successful CQR challenge.

II. Method of Collection

Criteria for Acceptable Documentation Necessary to Initiate the 2010 Census CQR Process

The Census Bureau requires documentation before committing resources to investigate concerns raised by State, local, or Tribal area officials or their representatives about boundary and geographic assignment errors or the accuracy of the census housing unit or group quarters population counts. The submitted challenges must specify whether the challenge disputes the location of a governmental unit boundary or the number of housing units and/or group quarters population counts in one or more census tabulation blocks, or both. The challenger must provide the following documentation based on the type of challenge:

- For boundary challenges, indicate on a map the location of the governmental unit boundary in dispute and show where the Census Bureau incorrectly depicts the boundary. Show the correct boundary legally effective January 1, 2010. (*See* the section "Types of Acceptable Maps".)
- For geocoding and coverage challenges, identify the specific contested 2010 Census tabulation block and a list of the addresses for all housing units or group quarters in that block on April 1, 2010. (*See* the section "Challenge Criteria.")

Boundary Challenge Criteria

State, local, or Tribal area governments must base challenges on boundaries legally in effect on January 1, 2010. The Census Bureau will compare the maps and appropriate supporting documentation submitted by the challenging governmental unit with the information used by the Census Bureau to depict the boundaries for the 2010 Census.

Maps submitted by State, local or Tribal area governments must show the correct location of the boundary and the portion of the boundary that the Census Bureau potentially depicted incorrectly, including the 2010 Census tabulation block numbers associated with the boundary. The State, local, or Tribal area government must also provide the Census Bureau with a list of addresses in challenged 2010 Census tabulation blocks, indicating their location in relationship to the boundary that the governmental unit wants the Census Bureau to correct.

For boundary challenges affected by legal actions not recorded by the Census Bureau, governmental units must submit the effective date and the ordinance number or law that effectuated the change in boundaries, provide evidence that the State certifying official has approved the boundary change if required by State law, and provide a statement that the boundary is not under litigation.

Types of Acceptable Maps

- 2010 Census Public Law 94–171 County Block Maps—The Census Bureau produces these maps as a reference for the Redistricting Data Files available for all States, the District of Columbia, and Puerto Rico.
- 2010 Census County Block Maps—The Census Bureau produces maps as a reference to the Summary File 1 data.
- The 2010 TIGER/Line File—The Census Bureau provides digital data in ESRI shapefile format. The governmental unit may generate maps based on information from the Census Bureau 2010 TIGER/Line shapefiles using a commercial geographic information system (GIS). These maps must identify the State, county, governmental unit, census tract, census tabulation block, and any other legal entity involved in a challenge. If a challenge involves an American Indian reservation or off-reservation trust lands, the maps must identify the American Indian area, census Tribal tract, and census tabulation block boundary.

Challenge Criteria

Housing Unit Count

The Redistricting Data (Pub. L. 94–171) Summary File can be used to obtain census tabulation block housing unit counts. Summary File 1 can also be used to obtain census tabulation block housing unit counts. Challenges must include a complete address list for all units that the challenger thinks the Census Bureau should include in each contested block. (Refer to the section "Types of Address Lists.") State, local, or Tribal area officials must certify that the addresses on their lists existed and could be lived in on April 1, 2010. The supporting evidence must specifically show the validity of any address and reflect residential addresses that existed as viable living quarters on April 1, 2010. Challenges to housing unit counts must specify the 2010 Census Tract and tabulation block(s) for which the counts are being challenged.

Group Quarters Population Count

The "Advance Release of Group Quarters Data from Summary File 1" provides the group quarters population counts for 2010 census tabulation blocks. Summary File 1 itself may also be used to obtain census tabulation blocks and Group Quarters population counts. Challenges must include a complete address list for all group quarters buildings that the challenger thinks the Census Bureau should include in each contested block. The State, local, or Tribal area official must certify that the addresses on their lists existed and could be lived in on April 1, 2010. Supporting evidence that specifically reflects the validity of any address list source showing the population within a group quarters must be dated no later than April 1, 2010. Challenges to group quarters population counts must specify the associated 2010 Census Tract and census tabulation block(s).

Types of Address Lists

- *City-Style Address Lists*—A city-style address must include house number, street name, city, State, ZIP Code and county. The city-style address list must be organized by 2010 Census tabulation block within 2010 Census Tract. Also include applicable housing unit identifiers in multi-unit buildings (such as apartment numbers). The Census Bureau requests the challenger use the address list template provided on the CQR Web site and submit the challenge electronically. In addition, mark the exact location of each challenged address on a map containing 2010 Census Tract and tabulation block(s).
- *Non-City Style Address Lists*—Non-city style addresses include rural route addresses and any other addresses that do not contain a complete house number, street name, city, State, ZIP Code, and county. The non-city style address list must be organized by 2010 Census tabulation block within census tract. If a household receives mail at a post office box address, provide the E–911 address, if it exists. The State, local or Tribal area government must provide the exact location for each challenged address on a map containing 2010 Census Tract and tabulation block(s). Focus the list on the specific area where the challenged addresses exist. All addresses in the challenged block must contain a description of the housing unit and location.
- *Group Quarters Address Lists*—Group Quarters addresses can include city style or non-city style addresses. Provide the group quarters name, number and street address, city, State, ZIP Code, county, and telephone number for the contact at the group quarters as of April 1, 2010. The group quarters address list must be organized by 2010 Census tabulation block within census tract. The challenger must provide documentation that supports the number of persons residing at the Group Quarters on April 1, 2010. In addition, provide the 2010 Census Tract and tabulation block number for the location of the group quarters including the exact location for each challenged address on a map containing 2010 Census Tract and tabulation block(s).

Census Bureau Actions

The Census Bureau will investigate acceptable challenges to determine whether it can identify information about the existence of a housing unit or occupied group quarters on April 1, 2010, that does not appear in the final census files due to an error in processing the information. The Census Bureau will neither collect new data nor make changes to apportionment counts, redistricting data, or any 2010 Census data products.

Definitions of Key Terms

American FactFinder—An interactive Web site for accessing and disseminating the results of many Census Bureau programs. The system is available through the Internet and the Census Bureau will use it to disseminate the results of the 2010 Census. The American FactFinder Web site can be found at: *http://factfinder.census.gov*.

Census Tabulation Block—A geographic area bounded by visible features, such as streets, roads, streams, and railroad tracts, and by nonvisible boundaries, such as city, town, township, and county limits, and short line-of-sight extensions of streets and roads. Generally, census blocks are small in area; for example, a block in a city bounded on all sides by streets. Census blocks in suburban and rural areas may be large, irregular, and bounded by a variety of features. In remote areas, census blocks may encompass hundreds of square miles. Census blocs are the smallest geographic entities for which the Census Bureau tabulates decennial census information.

Census Tract—Small, relatively permanent statistical subdivisions of a county or equivalent entity updated by local participants prior to each decennial census as part of the Census Bureau's Participant Statistical Areas Program in accordance with Census Bureau guidelines. Census tracts generally have a population size between 1,200 and 8,000 people, and have an optimum size of 4,000 people.

County or county equivalent—The primary legal subdivision of most States. In Louisiana, these divisions are known as parishes. In Alaska, which has no counties, the equivalent entities are boroughs, city and boroughs, municipalities, and census areas; the latter of which are delineated cooperatively for statistical purposes by the State of Alaska and the Census Bureau. In Puerto Rico, the primary divisions are municipios.

Demographic Profile—A table containing data that shows information on total population, sex, age, race, Hispanic or Latino origin, household relationship, group quarters population, household type, housing occupancy, and housing tenure.

Group Quarters—A group quarters is defined as a place where people live or stay, in a group living arrangement that is owned or managed by a governmental unit or organization providing housing and services for the residents. This is not a typical household-type living arrangement. These services may include custodial or medical care as well as other types of assistance, and residency is commonly restricted to those receiving these services. People living in group quarters are usually not related to each other. The two general types of group quarters are institutional and non-institutional. Institutional group quarters include: Nursing homes, mental hospitals and psychiatric units in other hospitals, hospitals with patients who have no usual home elsewhere, inpatient hospice facilities, correctional facilities for adults and juveniles, and residential schools for

people with disabilities. Non-institutional group quarters include: College or university dormitories and residence halls, military barracks, group homes, shelters, convents, migratory farm worker camps, military ship, and maritime/merchant vessels. Group quarters may have housing for staff as their usual residence at the group quarters address.

Housing unit—Living quarters in which the occupants live separately from any other individuals in the building and have direct access to their living quarters from outside the building or through a common hall. Housing units include such places as houses, apartments, mobile homes or trailers, groups of rooms, or a single room that is occupied as a separate living quarters, or if vacant, is intended for occupancy as a separate living quarters. A housing unit is defined as a living quarters that is closed to the elements and has all exterior windows and doors installed and final usable floors in place. For vacant units, the criteria of separateness and direct access are applied to the intended occupants, whenever possible. If the Census Bureau cannot obtain the information, the criteria are applied to the previous occupants.

Municipio—The primary legal subdivision of Puerto Rico (equivalent to county).

Overseas counts—Counts of military and Federal civilian personnel stationed overseas with their dependents living with them.

Postcensal Estimates—Population estimates for the years following the last published decennial census. The Census Bureau uses existing data series, such as births, deaths, Federal tax returns, Medicare enrollment, immigration, and housing unit information, to update the decennial census counts during the estimating process. These estimates are used in Federal funding allocations, monitoring recent demographic trends, and benchmarking many Federally funded survey totals.

Public Law 94–171—The Federal law amending Section 141 of Title 13 directs the Secretary of Commerce (who delegates that responsibility to the Director of the Census Bureau) to provide selected decennial census data tabulations to the States by April 1 of the year following the census. These tabulations are used by the States to redistrict areas used for elections such as congressional, legislative and school districts. In addition, the data are used for local redistricting such as the drawing of county council and city council districts.

Summary File 1—A data file that presents decennial census counts and basic cross-tabulations of information collected from all people and housing units. This information includes age, sex, race, Hispanic or Latino origin, household relationship, and whether the residence is owned or rented. Data will be available at the block level, but limited to the 2010 census tract level in cases where there are concerns with disclosure. The Census Bureau also will include summaries for other geographic areas, such as ZIP code tabulation areas and Congressional Districts.

Exhibit—Additional Information

This section provides additional information about the 2010 Census CQR program.

1. Where Should a Governmental Unit Submit a Challenge for the 2010 Census CQR Program?

Governmental units challenging the completeness or accuracy of the 2010 Census counts need to submit their challenge in writing to: Count Question Resolution Program, Room 3H061, Decennial Management Division, U.S. Census Bureau, Washington, DC 20233–0001. Governmental units can submit their challenge electronically to *dmd.cqr@census.gov*.

2. Will the Census Bureau Make Corrections to the Census Counts Based on Information Submitted by Governmental Units?

The Census Bureau will make corrections if research indicates they are warranted. The Census Bureau will base its determination of whether a correction is necessary or not, on the quality and completeness of the information provided by Tribal, and local governmental unit representatives and the results of the Census Bureau's research of the census records.

3. Which Governmental Units Are Eligible To Submit a CQR Challenge?

The Census Bureau will research and, if necessary, correct the counts for:

1. Counties and statistically equivalent entities.
2. Functioning minor civil divisions.
3. Incorporated places, including consolidated cities.
4. Census Designated Places in Hawaii and Puerto Rico only.
5. Federally recognized American Indian reservations and off-reservation trust lands.
6. American Indian Tribal subdivisions.
7. State-recognized American Indian reservations (submitted by a State official).
8. Alaska Native Regional Corporations.
9. Alaska Native Village Statistical Areas.
10. Tribal-designated statistical areas.
11. Oklahoma Tribal statistical areas.
12. State-designated Tribal statistical areas (submitted by a State official).
13. Hawaiian home lands (submitted by a State official).

The Census Bureau will not accept challenges for any other types of statistical or legally defined areas.

4. Will the Census Bureau Incorporate Corrections from the CQR Program into the (1) Apportionment, (2) Redistricting Data, or (3) 2010 Census Data Products?

(1) In accordance with the law, the apportionment counts are delivered to the President by December 31, 2010. The Census Bureau will not change the apportionment counts to reflect corrections resulting from the CQR program.

(2) The Census Bureau plans to begin delivery to States of the counts required for redistricting purposes in February 2011 and will complete this delivery by the statutory deadline of March 31, 2011. The Census Bureau will not change the data in these products to reflect the results of CQR challenges.

(3) The Census Bureau will not incorporate CQR corrections into any 2010 Census data products. The planned CQR program allows the Census Bureau to maintain consistency between data products while maintaining the schedule for timely release of the data. However, the Census Bureau will issue revised, certified population and housing unit counts for the affected governmental unit(s), maintain a list of CQR corrected geographic areas on the American Factfinder, and/or other Census Bureau URL locations, and will incorporate any corrections into its Postcensal Estimates program beginning in December 2012.

III. Data

OMB Number: Not available.
Form Number: None.
Type of Review: Regular.
Affected Public: State, local, or Tribal area governmental units in the United States and Puerto Rico.
Estimated Number of Respondents: Approximately 1,500 annually.
Estimated Time per Response: 5.2 hours (based on an average challenge of 40 housing units).
Estimated Total Annual Burden Hours: 7,800 hours.
Estimated Total Annual Cost: $122,220.00.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, U.S.C., Section 141.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

The Census Bureau will summarize and/or include comments submitted in response to this notice in the request for OMB approval of this information collection; the comments also will become a matter of public record.

Dated: May 21, 2010.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–12626 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 100429203–0204–01]

Developing a Supplemental Poverty Measure

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice and solicitation of comments.

SUMMARY: The Bureau of the Census (Census Bureau) issues this notice to request comments on the approach to developing a Supplemental Poverty Measure (SPM) presented in a report entitled "Observations from the Interagency Technical Working Group on Developing a Supplemental Poverty Measure," which was recently released by the Interagency Technical Working Group on Developing a Supplemental Poverty Measure (Working Group). This report was produced as part of an effort by the Working Group to suggest how the Census Bureau, in cooperation with the U.S. Department of Labor's Bureau of Labor Statistics (BLS), should develop a new Supplemental Poverty Measure. The report provides observations about how to make a series of initial choices in the development of the SPM. The eventual publication of the SPM will not replace the official poverty measure, nor will it have any impact on allocations determined by the poverty measurement. Rather, it is part of the Census Bureau's ongoing effort to more accurately measure poverty levels in the United States.

DATES: To ensure consideration, written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 25, 2010.

ADDRESSES: Send comments to David Johnson, Housing and Household Economic Statistics Division, Census Bureau, 4600 Silver Hill Road, Stop 8500, Washington, DC 20233–8500 or to *spm@census.gov*. The Interagency Technical Working Group's report may be found at: *http://www.census.gov/hhes/www/poverty/SPM_TWGObservations.pdf*.

FOR FURTHER INFORMATION CONTACT: David Johnson, Housing and Household Economic Statistics Division, Census Bureau, telephone number 301–763–6443 (this is not a toll-free number), e-mail to: *spm@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Since the publication of the first official U.S. poverty estimates in 1964, there has been continuing debate about the best approach to measuring poverty in the United States. Recognizing that supplemental estimates of poverty can provide very useful information to the public as well as to the Federal Government, in 2009, the Office of Management and Budget's (OMB) Chief Statistician formed an Interagency Technical Working Group on Developing a Supplemental Poverty Measure (Working Group). This group included representatives from BLS, the Census Bureau, the Economics and Statistics Administration, the Council of Economic Advisers, the U.S. Department of Health and Human Services, and OMB. The Working Group asked the Census Bureau, in cooperation with the Bureau of Labor Statistics, to develop a Supplemental Poverty Measure (SPM) to obtain an improved understanding of the economic well-being of American families and of how Federal policies affect those living in poverty, and offered its observations on how the Census Bureau should do so in the above-referenced report.

The SPM ultimately produced by the Census Bureau would not replace the official poverty measure, and the SPM will not be the measure used to estimate eligibility for government programs. The official statistical poverty measure, as defined in OMB Statistical Policy Directive No. 14, will continue to be produced and updated every year. The SPM is instead designed as an experimental measure that defines income thresholds and resources in a manner different from the official poverty measure. The Census Bureau considers the SPM a work in progress, and both the Working Group and the Census Bureau expect that there will be improvements to the SPM over time. The first publication of the SPM will be accompanied by a detailed description of the methodology used to estimate the new supplemental measure, and the Census Bureau expects to update this description as changes are incorporated in the SPM.

The new supplemental measure would be published initially in the fall of 2011 at the same time and level of detail as the 2010 income and poverty statistics that reflect the official poverty measure, and annually thereafter. Developing and estimating an SPM will take substantial advance work and planning, and the Working Group's observations are meant to assist the Census Bureau and the BLS in such planning.

II. Defining the Supplemental Poverty Measure

In its report, the Working Group laid out a series of suggestions and recommendations that, taken together, provide a roadmap through which the Census Bureau, with the assistance of BLS, can use to produce the initial set of estimates of the number and percentage of people in poverty based on the SPM in 2011. It is likely that the procedures used to create this first set of estimates will closely resemble the Working Group's recommendations. A much abbreviated summary of the group's suggestions follows. The Census Bureau invites the public to read and offer comments on the approach described in the Working Group's full report, which can be found at *http://www.census.gov/hhes/www/poverty/SPM_TWGObservations.pdf*. The Census Bureau is especially interested in receiving comments on the methodology the Working Group employed in making its recommendations.

The poverty threshold is the annual expenditure amount below which a family is considered poor. The Working Group recommended that the poverty threshold for the SPM should be established on the basis of expenditures for commodities that all families must purchase: Food, shelter, clothing, and utilities (collectively, FSCU). This threshold should be derived from expenditure data from BLS' U.S. Consumer Expenditure Survey. The Working Group recommended that the reference sample for this threshold be

an average of all families with exactly two children. A "family unit" should consist of all related individuals who live at the same address, any co-resident unrelated children who are cared for by the family, and any cohabiters and their children. Using the most recent five-year distribution of FSCU expenditures, the Working Group recommended that the Census Bureau set the dollar amount of the poverty threshold at the 33rd percentile of the distribution of FCSU expenditures. To account for differences among those who rent, own a home with a mortgage, and own a home without a mortgage, the Working Group recommended the Census Bureau develop an adjustment factor for the shelter component, to reflect differences in expenditures among these three groups. To account for basic expenditures outside of FCSU, the Working Group recommended that the Census Bureau multiply the dollar amount (as calculated above) by 1.2. To define thresholds for different families, the Working Group recommended the use of the so-called "three-parameter equivalence scale" that has been used by the Census in recent years. The Working Group also recommended that thresholds be updated annually using an updated five-year distribution of FSCU expenditures.

The Working Group also recommended that poverty thresholds should be adjusted for price differences across geographic areas. American Community Survey (ACS) data, which is collected annually by the Census Bureau, appear to be the best data currently available from which one can create a housing price index based on differences in rental prices of housing across areas. Future work may provide price data that can be used to measure interarea price differentials on more items than housing alone.

To determine poverty status under the SPM, resources (income plus noncash benefits, minus necessary expenses) are compared to a family's poverty threshold (as calculated in the method described above). If a family's resources are below its poverty threshold, that family and all persons in the family are counted as poor. The Working Group recommended that family resources be estimated as the sum of cash income, plus any Federal government in-kind benefits that families can use to meet their FCSU. From this amount, the Working Group recommended subtracting taxes (or adding tax credits), work expenses, child support paid, and out-of-pocket medical expenses to determine poverty status. The survey used to make these calculations will be the Current Population Survey's Annual Social and Economic Supplement, (CPS ASEC), which is jointly sponsored by the Census Bureau and BLS.

Work expenses have an impact on poverty status. The Working Group therefore recommended that the definition of resources used to calculate the SPM should exclude expenses associated with commuting and child care. For child care, the Working Group recommended that actual expenses, either reported on the CPS ASEC or assigned to CPS ASEC families based on other household surveys that collect these data, should be used. For other work expenses, the Working Group recommended that the Census Bureau investigate the advantages and disadvantages of using actual expenses versus an average amount for all working adults.

To account for medical out-of-pocket (MOOP) expenses, the Working Group recommended that the Census Bureau examine the reliability of questions newly added to the CPS ASEC in 2010. If these data are found to be reliable, the Working Group recommended that the Census Bureau use data from the CPS ASEC in the calculation of family resources. If these data are found to be unreliable, then the Working Group recommended that MOOP should be assigned to CPS ASEC families and individuals from other surveys that collect reliable information on MOOP, in a way that takes into account the differences in medical expenses among demographic groups. The Working Group also suggested that the Census Bureau investigate the advantages and disadvantages of adjusting MOOP for those who are uninsured, to reflect that the uninsured may be paying less than is customary because they lack health insurance and cannot pay for health services.

III. Desired Focus of Comments

While the Census Bureau welcomes public comments on the approaches described in the report of the Working Group, the Census Bureau is particularly interested in receiving comments on the specific methods used in the report, to ensure that the Census Bureau uses best practices in developing the SPM. Specifically, the Census Bureau is interested in comments on:

- Methods and data sources used to geographically adjust poverty thresholds;
- Methods and data sources used to adjust resources to account for child care and other work-related expenses;
- Methods and data sources used to adjust resources to account for medical out-of-pocket expenses; and
- Methods and data sources used to impute dollar values for in-kind benefits and taxes.

For more information on the Working Group's observations on the components for the new SPM, see the report entitled "Observations from the Interagency Technical Working Group on Developing a Supplemental Poverty Measure." For more information/background on issues related to alternative poverty measures, see *http://www.census.gov/hhes/www/povmeas/papers.html*.

Dated: May 18, 2010.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2010–12628 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 10–00001]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review to Alaska Longline Cod Commission (Application No. 10–00001).

SUMMARY: On May 13, 2010, the U.S. Department of Commerce issued an Export Trade Certificate of Review to the Alaska Longline Cod Commission ("ALCC"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2009).

The Office of Competition and Economic Analysis is issuing this notice pursuant to 15 CFR section 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR section 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the

determination on the ground that the determination is erroneous.

Description of Certified Conduct

ALCC is certified to engage in the Export Trade Activities and Methods of Operation described below in the following Export Trade and Export Markets:

Export Trade

Export Product

ALCC intends to export frozen at-sea, headed and gutted, Alaska cod (Gadus macrocephalus), also known as Pacific cod. Headed and gutted means the head and viscera are removed prior to freezing. Frozen-at-sea means that the Export Product is frozen on the catcher-processor vessel while at-sea immediately after being headed and gutted.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets, ALCC and its Members may undertake the following activities:

1. Each Member will from time to time independently determine in its sole discretion (i) the quantity of Export Product that it makes available for sale in export markets, and (ii) whether any portion of such quantity will be sold independently by it, be sold in cooperation with some or all of the other Members, or be made available to ALCC for sale in export markets. ALCC may not require any Member to export any minimum quantity of Export Product.

2. ALCC and/or its Members may enter into agreements to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary(ies) for the quantity of Export Product dedicated by each Member for sale by ALCC or any Member(s) in that country or market. In any such agreement (i) ALCC or the Member(s) acting as the exclusive Export Intermediary may agree not to represent any other supplier of Export Product with respect to one or more export market(s), and (ii) Members may agree that they will export the quantity of Export Product dedicated for sale in such export markets only through ALCC or the Member(s) acting as an exclusive Export Intermediary, and that they will not export Export Product otherwise, either directly or through any other Export Intermediary.

3. ALCC and/or one or more of its Members may engage in joint bidding or selling arrangements for export markets and allocate sales resulting from such arrangements among the Members.

4. The Members may refuse to deal with Export Intermediaries other than ALCC and its Members.

5. ALCC may, for itself and on behalf of its Members, by agreement with its Members or its Members' distributors or agents, or on the basis of its own determination:

a. Establish the prices at which Export Product will be sold in Export Markets;

b. Establish standard terms of sale of Export Product;

c. Establish standard quality grades for Export Product;

d. Establish target prices for sales of Export Product by its Members in Export Markets, with each Member remaining free to deviate from such target prices in its sole discretion;

e. Subject to the limitations set forth in paragraph 1, above, establish the quantity of Export Product to be sold in Export Markets;

f. Allocate among the Members Export Markets or customers in the Export Markets;

g. Refuse to quote prices for, or to market or sell, Export Product in Export Markets; and

h. Engage in joint promotional activities aimed at developing existing or new Export Markets, such as advertising and trade shows.

6. ALCC may, for itself and on behalf of its Members, contact non-member suppliers of Export Product to elicit information relating to price, volume delivery schedules, terms of sale, and other matters relating to such suppliers' sales or prospective sales in export markets.

7. Subject to the limitations set forth in paragraph 1, above, ALCC and its Members may agree on the quantities of Export Product and the prices at which ALCC and its Members may sell Export Product in and for export markets, and may also agree on territorial and customer allocations in export markets among the Members.

8. ALCC and its Members may enter into exclusive and non-exclusive agreements appointing third parties as Export Intermediaries for the sale of Export Product in Export Markets. Such agreements may contain the price, quantity, territorial and customer restrictions for export markets contained in paragraph 5, above.

9. ALCC and its Members may solicit individual non-Member suppliers of Export Product to sell such Export Product to ALCC or Members for sale in Export Markets.

10. ALCC may compile for, collect from, and disseminate to its Members, and the Members may discuss among themselves, either in meetings conducted by ALCC or independently via telephone and other available and appropriate modes of communication, the information described in Item 14 below.

11. ALCC and its Members may prescribe conditions for withdrawal of Members from and admission of Members to ALCC.

12. ALCC may, for itself or on behalf of its Members, establish and implement a quality assurance program for Export Product, including without limitation establishing, staffing, and operating a laboratory to conduct quality testing, promulgating quality standards or grades, inspecting Export Product samples and publishing guidelines for and reports of the results of laboratory testing.

13. ALCC may conduct meetings of its Members to engage in the activities described in paragraphs 1 through 12, above.

14. ALCC and its Members may exchange and discuss the following types of export-related information:

a. Sales and marketing efforts, and activities and opportunities for sales of Export Product in Export Markets, including but not limited to selling strategies and pricing, projected demand for Export Product, standard or customary terms of sale in Export Markets, prices and availability of Export Product from competitors, and specifications for Export Product by customers in Export Markets;

b. Price, quality, quantity, source, and delivery dates of Export Product available from the Members for export including but not limited to export inventory levels and geographic availability;

c. Terms and conditions of contracts for sales to be considered and/or bid on by ALCC and its Members;

d. Joint bidding or selling arrangements and allocation of sales resulting from such arrangements among the Members, including each Member's share of the previous calendar year's total foreign sales;

e. Expenses specific to exporting to and within Export Markets, including without limitation transportation, trans- or intermodal shipments, cold storage, insurance, inland freight to port, port storage, commissions, export sales,

documentation, financing, customs duties, and taxes;

f. U.S. and foreign legislation, regulations and policies affecting export sales; and

g. ALCC's and/or its Members' export operations, including without limitation, sales and distribution networks established by ALCC or its Members in Export Markets, and prior export sales by Members (including export price information).

Definition

"Export Intermediary" means a person who acts as a distributor, representative, sales or marketing agent, or broker, or who performs similar functions.

Members (Within the Meaning of Section 325.2(1) of the Regulations)

Alaskan Leader Fisheries, Inc., Lynden, Washington; Alaskan Leader Seafoods LLC, Lynden, Washington; Gulf Mist, Inc., Everett, Washington; Deep Sea Fisheries, Inc., Everett, Washington; Aleutian Spray Fisheries, Inc., Seattle, Washington; Pathfinder Fisheries LLC, Seattle, Washington; Liberator Fisheries, LLC, Seattle, Washington; Siberian Sea Fisheries, LLC, Seattle, Washington; Akulurak LLC, Seattle, Washington; Romanzoff Fishing Company, Seattle, Washington; Beauty Bay Washington, LLC, Seattle, Washington; Tatoosh Seafoods LLC, Seattle, Washington; Blue North Fisheries, Inc., Seattle, Washington; Blue North Trading Company, LLC, Seattle, Washington; Clipper Group, Ltd., Seattle, Washington; Clipper Seafoods, Ltd., Seattle, Washington (a wholly-owned subsidiary of Clipper Group, Ltd.); Bering Select Seafoods Company, Seattle, Washington (a wholly owned subsidiary of Clipper Group, Ltd.); Glacier Bay Fisheries LLC, Seattle, Washington (Glacier Bay Fisheries LLC is controlled by Glacier Fish Company LLC); Glacier Fish Company LLC, Seattle, Washington; and Shelfords' Boat, Ltd., Mill Creek, Washington.

A copy of the Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4100, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: May 19, 2010.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2010–12594 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Howard Smith or Rebecca Pandolph, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5193 or (202) 482–3627, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2010, the Department of Commerce ("Department") issued the preliminary results of the new shipper review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC") covering sales of subject merchandise made by Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd. ("Zhejiang Tianyi") for the period January 1, 2009 through June 30, 2009. *See Wooden Bedroom Furniture from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review*, 75 FR 9581 (March 3, 2010). As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The current deadline for the final results of this review is currently May 24, 2010.

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(i)(1) require the Department to issue the final results in a new shipper review of an antidumping duty order 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

The Department finds that this new shipper review is extraordinarily complicated because of a recent filing which calls into question the accuracy and reliability of submissions in this review. In particular, the Department needs additional time to consider whether the information was properly filed and to consider any such information. Accordingly, we are extending the time for the completion of the final results of this review by 60 days, from the current due date of May 24, 2010 to July 23, 2010.

Dated: May 20, 2010.

This notice is published in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12662 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Broadband Researchers' Data Workshop

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Public Meeting.

SUMMARY: The National Telecommunications and Information Administration (NTIA) will host a public meeting concerning the nature of data related to broadband Internet access and use that the agency collects, data needs of researchers, and future broadband research.

DATES: The meeting will be held on June 3, 2010, from 1 p.m. to 3 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Herbert C. Hoover Building, Room 4830, Washington, DC. (Please enter at 14th Street.) The disability accessible entrance is located at the 14th Street Aquarium Entrance. Any change in the location will be posted on NTIA's Web

site (*http://www.ntia.doc.gov*) prior to the meeting.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meeting, contact James McConnaughey, NTIA, at (202) 482–3161 or *JMcConnaughey@ntia.doc.gov.*

SUPPLEMENTARY INFORMATION: President Obama has expressly committed to the expansion of advanced technology across the United States as a necessary part of the foundation for long-term economic stability and prosperity.[1] The increased availability and use of broadband technology is an integral part of the President's technology agenda. The National Telecommunications and Information Administration is the President's principal adviser on domestic and international telecommunications policies pertaining to the Nation's economic and technological advancement. In order to achieve the technology and broadband goals of the Administration, NTIA is working with the Federal Communications Commission (FCC), the Department of Agriculture's Rural Utilities Service (RUS), and other stakeholders to develop and implement economic and regulatory policies that foster broadband deployment and adoption. Current and detailed data by U.S. households' and persons' usage of and access to broadband is critical to allow policymakers not only to gauge progress made to date, but to identify problem areas.

Eight times since the early 1990s, the U.S. Commerce Department's Census Bureau has collected data based on questions that NTIA sponsored and developed (often in collaboration with the Department's Economics and Statistics Administration) to provide up-to-date information on the extent of the Nation's Internet adoption and the major reasons why current non-users choose not to adopt. Data have been generated by several demographic and geographic categories and must be weighted and appropriately aggregated before release. These various data, to the extent allowed under federal disclosure laws, are made publicly available for use by the research community to conduct economic, financial, demographic, and other studies. The purpose of the public meeting is to provide an opportunity for the research community to propose, with rationale, the type of Internet usage data that could be usefully collected through scientific-based surveys conducted by the Census Bureau (*e.g.,* the Current Population Survey Internet Use Supplement).

NTIA is authorized to conduct studies and evaluations concerning telecommunications research and development and for more than 15 years has collected and analyzed nationwide Internet data, including since 2000 usage of high-speed connectivity. These activities have provided essential data for prudent policymaking in this area, including providing the data to the research community whose work provides invaluable inputs for sound policies. NTIA currently collects broadband related data from several sources, as demonstrated in the agency's October 30, 2009, Broadband Data Transparency Public Workshop.[2]

Matters to be Considered:

The meeting will include a discussion of the following topics, including specific areas of inquiry:

1. Internet access at home and outside the home.
2. Internet use at home and outside the home.
3. Computer access at home and outside the home.
4. Computer use at home and outside the home.
5. Key demographic variables.
6. Key geographic variables.
7. Non-adoption issues: Internet.
8. Non-adoption issues: Computers.

The meeting will also seek input on:

A. The timing ("periodicity") of future data collections.

B. The data format preferred by researchers including those for distributing broadband-related data on the Web to promote maximum transparency for researchers and the interested public.

C. An updated version of the October 2003 Current Population Survey Computer and Internet Use Supplement survey instrument (pp. 8 through 23), *http://www.bls.census.gov/cps/computer/2003/quest2003.pdf.*

Specific information regarding the status of and data from specific applications for the Broadband Technology Opportunities Program (BTOP) and the State Broadband Data and Development Grant Program (State Broadband Data Program) will not be discussed at the meeting.

Time and Date: The meeting will be held on June 3, 2010, from 1 p.m. to 3 p.m. Eastern Daylight Time. The times and the agenda topics are subject to change. The meeting may be webcast. Please refer to NTIA's web site, *http://www.ntia.doc.gov,* for the most up-to-date meeting agenda and webcast information.

Place: The meeting will be held at the United States Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC. The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. Attendees should bring a photo ID and arrive early to clear security. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodation, such as sign language interpretation or other ancillary aids, are asked to notify Mr. McConnaughey at (202) 482–1880 or *JMcConnaughey@ntia.doc.gov,* at least five (5) business days before the meeting.

Dated: May 21, 2010.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–12642 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–60–P

[1] *See* Guiding Principles, "Innovation in the Economy: Drive Economic Growth and Solve National Problems by Deploying a 21st Century Information Infrastructure," *http://www.whitehouse.gov/issues/technology.*

[2] *See http://www.ntia.doc.gov/advisory/broadbanddata/.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW64

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Council (Pacific Council) and its advisory entities will hold public meetings.

DATES: The Pacific Council and its advisory entities will meet June 10–17, 2010. The Pacific Council meeting will begin on Saturday, June 12, 2010 at 8 a.m., reconvening each day through Thursday, June 17, 2010. All meetings are open to the public, except a closed session will be held from 8 a.m. until 9 a.m. on Saturday, June 12 to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Crowne Plaza Hotel, 1221 Chess Drive, Foster City, CA 94404; telephone: (650) 570–5700.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204 toll free; or access the Pacific Council website, *http://www.pcouncil.org* for the current meeting location, proposed agenda, and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The following items are on the Pacific Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks and Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Groundfish Management

1. NMFS Report
2. Fishery Management Plan (FMP) Amendment 23, Annual Catch Limits and Accountability Measures
3. Tentative Adoption of Harvest Specifications, Rebuilding Plan Revisions, and Management Measures for 2011–12 Fisheries
4. Stock Assessment Planning for 2013–14 Fishery Guidance
5. Consideration of Inseason Adjustments
6. Regulatory Deeming for FMP Amendment 20 (Trawl Rationalization) and Amendment 21 (Intersector Allocation)
7. Final Adoption of Harvest Specifications, Rebuilding Plan Revisions, and Management Measures for 2011–12 Fisheries

C. Salmon Management

FMP Amendment 16, Annual Catch Limits and Accountability Measures

D. Habitat

Current Habitat Issues

E. Highly Migratory Species Management

1. Recommendations to International Fishery Management Organizations
2. FMP Amendment 2, Annual Catch Limits and Accountability Measures
3. Changes to Routine Management Measures for 2011–12

F. Coastal Pelagic Species Management

1. Pacific Mackerel Management for 2010–11
2. FMP Amendment 13, Annual Catch Limits and Accountability Measures

G. Administrative Matters

1. Approval of Council Meeting Minutes
2. Fiscal Matters
3. Membership Appointments and Council Operating Procedures
4. Future Council Meeting Agenda and Workload Planning

SCHEDULE OF ANCILLARY MEETINGS

Thursday, June 10, 2010	.
Regulatory Deeming Workgroup (Tentative)	8 a.m.
Salmon Technical Team	8 a.m.
Habit Committee	8:30 a.m.
Friday, June 11, 2010	.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Regulatory Deeming Workgroup (Tentative)	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	8:30 a.m.
Budget Committee	1:15 p.m.
Saturday, June 12, 2010	.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Highly Migratory Species Management Team	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Council Chair's Reception	6 p.m.
Sunday, June 13, 2010	.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	4:30 p.m.
Monday, June 14, 2010	.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Coastal Pelagic Species Advisory Subpanel	8 a.m.
Coastal Pelagic Species Management Team	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary.
Tuesday, June 15, 2010	.
California State Delegation	7 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary.
Wednesday, June 16, 2010	.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary.
Thursday, June 17, 2010	.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As Necessary.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: May 21, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–12623 Filed 5–25–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849]

Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Rebecca Pandolph or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–3627 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 2003, the Department of Commerce ("Department") published in the **Federal Register** the antidumping duty order on certain cut–to-length carbon steel plate ("CTL Plate") from the People's Republic of China ("PRC"). *See Suspension Agreement on Certain Cut–to-Length Carbon Steel Plate From the People's Republic of China; Termination of Suspension Agreement and Notice of Antidumping Duty Order*, 68 FR 60081 (October 21, 2003). On November 2, 2009, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on CTL Plate from the PRC for the period of review ("POR") November 1, 2008 through October 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 56573 (November 2, 2009).

On November 30, 2009, the Department received a timely request from Nucor Corporation, a domestic producer of CTL plate, to conduct an administrative review of Hunan Valin Xiangtan Iron & Steel Co., Ltd ("Hunan Valin"). No other party requested an administrative review. On December 23, 2009, in accordance with section 751(a) of Tariff Act of 1930, as amended (the "Act"), the Department published in the **Federal Register** a notice of the initiation of an antidumping duty administrative review of Hunan Valin. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 68229 (December 23, 2009).

On December 23, 2009, Hunan Valin submitted a letter certifying that it did not have any exports or sales of subject merchandise during the POR. The Department conducted an internal U.S. Customs and Border Protection ("CBP") data query and found no evidence that Huanan Valin had any shipments of subject merchandise during the POR. In addition, on January 13, 2010, the Department made a "No Shipments Inquiry" to CBP to confirm that there were no exports of subject merchandise by Hunan Valin during the POR. The Department asked CBP to notify the Department within ten days if CBP "has contrary information and is suspending liquidation" of subject merchandise exported by Hunan Valin. *See* Memorandum to All Interested Parties regarding, "Antidumping Duty Administrative Review of Certain Cut–To-Length Steel Plate from the People's Republic of China (PRC): Hunan Valin Xiangtran Iron & Steel Co., Ltd.'s No Shipment Claim," dated March 16, 2010 ("Intent to Rescind Memorandum"). CBP did not reply with contrary information. The Department provided interested parties in this review until March 23, 2010, to submit comments on the Intent to Rescind Memorandum. The Department did not receive comments from any interested party on the Department's intent to rescind.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review with respect to a particular exporter or producer if the Department concludes that during the POR there were no entries, exports, or sales of the subject merchandise by that exporter or producer. As noted above,

the Department has found and continues to find no evidence that Hunan Valin had shipments or entries of subject merchandise during the POR and no interested party has commented on the issue. Therefore, pursuant to 19 CFR 351.213(d)(3), the Department is rescinding the antidumping duty administrative review with respect to Hunan Valin.

Assessment

The Department will instruct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry, for entries during the period November 1, 2008 through October 31, 2009. The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice of rescission of administrative review.

Notification to Importers

This notice serves as a final reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order ("APO")

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: May 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–12661 Filed 5ndash;25–10; 8:45 am]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("CPSC") is announcing that a proposed collection of information has been submitted to the Office of Management and Budget ("OMB") for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 25, 2010.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* CPSC Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov.* All comments should be identified by the CPSC Docket No. CPSC–2009–0073 and the title "Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form." The written comments should also be submitted to the CPSC, identified by Docket No. CPSC–2009–0073, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, 301–504–7671, *lglatz@cpsc.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the CPSC has submitted the following proposed collection of information to OMB for review and clearance. TITLE: Virginia Graeme Baker Pool and Spa Safety Act; Compliance Form (Docket No. CPSC–2009–0073).

The Virginia Graeme Baker Pool and Spa Safety Act ("Pool and Spa Safety Act") went into effect on December 19, 2008 (Pub. L. 110–140). The Pool and Spa Safety Act applies to public pools and spas and requires that each swimming pool and spa drain cover manufactured, distributed, or entered into commerce in the United States shall conform to the entrapment protection standards of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or drain cover pursuant to section 1404(b) of the Act ("Drain Cover Standard"). In addition to the anti-entrapment devices or systems, each public pool and spa in the United States with a single main drain other than an unblockable drain is required to be equipped with one or more of the following devices and systems designed to prevent entrapment by pool or spa drains: Safety vacuum release system ("SVRS"); suction-limiting vent system; gravity drainage system; automatic pump shut-off system or drain disablement. The Pool and Spa Safety Act is designed to prevent the tragic and hidden hazard of drain entrapment and evisceration in public pools and spas.

The CPSC staff will use a "Verification of Compliance Form" to collect the information necessary to identify drain covers at pools and spas that do not meet the requirements of the ASME/ANSI A112.19.8 performance standard or any successor standard regulating such swimming pool or spa drain cover. This compliance form may be viewed at *http://www.regulations.gov*, Docket No. CPSC–2009–0073, Supporting and Related Materials. CPSC investigators or designated State or local government

officials will use the form which will be filled out entirely at the site during the normal course of the pool and spa inspection. Using the form, the inspectors will collect information regarding the pool or spa facility; identify the type, location and features of the pool or spa; describe the drain covers, anti-entrapment device/systems, sump or equalizer lines at the site; and report on whether any actions are necessary to bring the pool or spa into compliance.

In the **Federal Register** of September 21, 2009, (74 FR 48064), the CPSC published a 60-day notice requesting public comment on the proposed collection of information. Seven comments were received. Several commenters suggested the time burden allotted for the pool operators to participate in the pool inspection was insufficient.

Based on the public comments and CPSC staff's experience inspecting 1,200 pools and spas, the estimated burden hours for pool operators have been increased from 0.5 hours to 3.0 hours.

One commenter recommended that State or local officials use the proposed compliance form during the inspections to ensure consistency. In addition, the commenter stated that CPSC staff should accept findings by State or local officials and not re-inspect the pool.

CPSC staff is working with State and local officials to avoid a duplication of effort regarding pool inspections. State and local officials are conducting a limited number of pool and spa inspections to determine if the requirements of the Pool and Spa Safety Act have been met. CPSC staff will follow up with the pool owner or operator if corrective action is needed.

One commenter recommended an additional requirement for pool operators to state how the facility will monitor the security of the drain cover (*i.e.,* insure it stays fastened in place) and note the expiration date for the cover. Another commenter suggested that the pool operators provide documentation that drain covers and/or SVRS were correctly installed.

CPSC staff is aware of the importance of ensuring the security of the drain cover, but those are policies for the facility to implement, and are not a part of the inspection. However, CPSC staff will request that the pool owner or operator provide the expiration date for the drain covers in the compliance form.

One commenter suggested that, in order to minimize the burden, an electronic form should be used and the pool owners/operators should fill it out before the inspection. A few commenters requested additional questions, or the use of different terms in the compliance form.

The purpose of the compliance form is to ensure that the CPSC inspection and data collection procedures are completed by CPSC staff or the designated State or local government official. The compliance form is not intended to be filled out by the pool owner or operator. Based on the CPSC staff's experience with the compliance form to date, the information obtained through the form adequately identifies drain covers at pools and spas that do not meet the requirements of ASME/ANSI A112.19.8, and except for the inclusion of the expiration date of the drain cover, we will not otherwise revise the compliance form at this time.

One commenter recommended that CPSC partner with local departments of health, industry, or a non-profit so it can inspect a more representative sample of pools.

CPSC is contracting with State and local officials to conduct pool inspections that follow guidelines provided by CPSC for inspecting pools for compliance with the Pool and Spa Safety Act. The State and local officials can conduct the pool inspections when they do their regular visits to these pools. CPSC staff will follow up with the pool owner or operator if corrective action is needed.

Burden Estimates: The CPSC staff estimates that there may be approximately 700 facilities inspected annually. Because the investigators will be talking to either the pool owner/operator or pool staff at the time of the inspection and asking questions to help complete the form, the CPSC staff estimates that the burden hours for pool owners or pool staff to respond to the questions will be approximately 3 hours per inspection. Thus, the estimated total annual burden hours for respondents are approximately 2,100 hours (700 inspections $\times$ 3 hours per inspection). Although respondents may include either junior or senior pool staff, CPSC staff based the annualized cost to respondents based on the compensation for management-level employees, since such employees may be the most knowledgeable of the pool or spa used. The CPSC staff estimates that the annualized cost to all respondents is approximately $99,624 based on an hourly wage of $47.44 per hour ($47.44 $\times$ 2,100) (Bureau of Labor Statistics ("BLS"), December 2008, all workers, service, management, professional, and related).

The CPSC staff estimates that it will take an average of 2.5 hours to review the information collected from the oral communications with pool owners/operators or staff. The annual cost to the Federal government of the collection of information in these regulations is estimated to be $19,361. This is based on an average wage rate of $55.97 (the equivalent of a GS–14 Step 5 employee). This represents 70.1 percent of total compensation with an additional 29.9 percent coming from benefits (BLS, September 2008, percentage total benefits for all civilian management, professional, and related employees), or $79.84 $\times$ 242.5 hours.

Dated: May 19, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–12605 Filed 5–25–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Meetings of the Draft Environmental Impact Statement for Basing the U.S. Marine Corps Joint Strike Fighter F–35B on the East Coast

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section (102)(2)(c) of the National Environmental Policy Act (NEPA) of 1969, and regulations implemented by the Council on Environmental Quality (40 Code of Federal Regulations [CFR] Parts 1500–1508), Department of Navy (DoN) NEPA regulations (32 CFR Part 775), and U.S. Marine Corps (USMC) NEPA directives (Marine Corps Order P5090.2A, changes 1 and 2), DoN has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Environmental Impact Statement (DEIS) that evaluates the potential environmental consequences that may result from the basing of the F–35B Joint Strike Fighter (JSF) on the East Coast of the United States.

With the filing of the DEIS, DoN is initiating a 45-day public comment period and has scheduled five public comment meetings to receive oral and written comments on the DEIS. Federal, state, local agencies, and interested parties are encouraged to provide comments in person at any of the public comment meetings, or in writing anytime during the public comment period. This notice announces the date and location of the public meetings and provides supplementary information about the environmental planning effort.

DATES: The DEIS will be distributed to Federal, State, and local agencies, elected officials, and other interested

parties on May 28, 2010, initiating the 45-day public comment period which will end on July 12, 2010. Each of the five public meetings will be conducted as an informational open house. Marine Corps and Navy representatives will be available to clarify information related to the DEIS. All five public comment meetings will be held from 4 p.m. to 7 p.m., on the dates and at the locations indicated below:

(1) June 15, 2010, Havelock Tourist and Event Center, 201 Tourist Center Drive, Havelock, NC 28532.

(2) June 16, 2010, Emerald Isle Community Center, 7500 Emerald Drive, Emerald Isle, NC 28594.

(3) June 17, 2010, Fred A. Anderson Elementary School Cafeteria, 507 Anderson Drive, Bayboro, NC 28515.

(4) June 22, 2010, Holiday Inn Conference Convention Center, 2225 Boundary Street, Beaufort, SC 29902.

(5) June 24, 2010, Long County High School, 1 East Academy Street, Ludowici, GA 31316.

Attendees can submit written comments at all public meetings. A stenographer will also be present to transcribe oral comments. Equal weight will be given to both oral and written comments and all comments (either presented orally through transcription and/or written) submitted during the public review period will become part of the public record on the DEIS and will be responded to in the Final EIS. Written comments may be submitted by regular U.S. mail or electronically as described below.

ADDRESSES: A copy of the DEIS is available at the project Web site, *http://www.usmcJSFeast.com,* and at the local libraries identified at the end of this notice. Comments on the DEIS can be submitted via the project Web site or in writing by submitting to: USMC F–35B East Coast Basing EIS, P.O. Box 56488, Jacksonville, FL 32241–6488. Mailed comments must be postmarked by July 12, 2010, and electronic comments must be submitted on or before July 12, 2010, to be considered in this environmental review process.

FOR FURTHER INFORMATION CONTACT: F–35B EIS Project Manager, Environmental Planning & Conservation Division, Naval Facilities Engineering Command Mid-Atlantic, Code EV21, 9742 Maryland Avenue, Z–144, 1st Floor, *Attn:* Ms. Linda Blount, Norfolk, VA 23511.

SUPPLEMENTARY INFORMATION: A Notice of Intent for the EIS was published in the **Federal Register** on January 15, 2009 (Vol. 74, No. 10, pp. 2514–2515).

Proposed Action

The Proposed Action would base and operate a total of 13 squadrons of F–35B aircraft on the East Coast of the United States. The F–35B aircraft is the world's first 5th generation Short Takeoff Vertical Landing (STOVL), stealth, supersonic, multi-role, fighter aircraft that would replace legacy Marine Corps air fleets of F/A–18s and AV–8Bs. Specifically, the proposal would base and operate 11 F–35B operational squadrons (which includes one Reserve squadron) with up to 16 aircraft per squadron and the PTC (composed of two Fleet Replacement Squadrons [FRSs]) with 20 aircraft per squadron. The Proposed Action involves replacing seven operational F/A–18 and four AV–8B (three operational squadrons and one FRS) squadrons of 152 authorized aircraft with up to 216 F–35Bs; establishing a PTC with two F–35B FRSs; conducting flight operations to meet the training and combat readiness requirements; transitioning associated military personnel; and constructing and/or demolishing facilities and infrastructure needed to base and operate both the operational F–35B squadrons and the PTC.

Purpose and Need

The purpose of the Proposed Action is to efficiently and effectively maintain combat capability and mission readiness as the Marine Corps faces increased deployments across a spectrum of conflicts, and a corresponding increased difficulty in maintaining an aging legacy aircraft inventory. The need for the Proposed Action is to replace aging legacy aircraft and integrate the operational and PTC squadrons into the existing Marine Corps command and organizational structure. This action would also ensure that the Marine Corps' aircrews benefit from the aircraft's major technological improvements and enhanced training and readiness requirements.

Alternatives Considered in the DEIS

The DEIS evaluates the potential environmental impacts of four action alternatives and the No Action Alternative.

- Alternative 1 (Preferred) would base three operational squadrons and the PTC at MCAS Beaufort and eight operational squadrons at MCAS Cherry Point.
- Alternative 2 would base the PTC at MCAS Beaufort and eleven operational squadrons at MCAS Cherry Point.
- Alternative 3 would base eight operational squadrons at MCAS Beaufort and three operational squadrons and the PTC at MCAS Cherry Point.
- Alternative 4 would base eleven operational squadrons at MCAS Beaufort and the PTC at MCAS Cherry Point.
- Under the No Action Alternative, the Marine Corps would not provide the facilities or functions to support basing or operating F–35B squadrons at these two Air Stations on the East Coast. There would be no transition of F–35B personnel, construction to support the F–35B, or F–35B operations. Existing F/A–18 and AV–8B squadrons would continue to be used at approximately the current levels. The Marine Corps would continue to repair and operate the existing aircraft at greater expense as the F/A–18 and AV–8B aircraft continue to deteriorate until the end of their useful life.

Environmental resources evaluated for potential impacts in the DEIS include airfields and airspace; noise; air quality; hazardous materials, toxic substances, and hazardous wastes; safety; land use; socioeconomics; environmental justice/protection of children; community services; utilities and infrastructure; transportation and ground traffic; biological resources; geology, topography, and soils; water resources; cultural resources; and coastal zone management. The DEIS also analyzes cumulative impacts from other past, present, and reasonably foreseeable future actions occurring at or near MCAS Beaufort and MCAS Cherry Point.

Environmental consequences of the Proposed Action would principally arise from construction and aircraft operations. Under the preferred alternative (Alternative 1), construction would occur at both Air Stations but would not affect any special status species or cultural resources. The noise environment at the two Air Stations would also change as a result of the preferred alternative. The other three alternatives have similar types and levels of impacts. The DEIS presents an array of construction and minimization measures associated with project design and planning that avoids and minimizes most potential impacts. The USMC will fully comply with regulatory requirements for the protection of environmental resources.

Schedule: The Notice of Availability publication in the **Federal Register** and local print media starts the 45-day public comment period for the DEIS. The Marine Corps will consider and respond to all written and electronic comments, including email, submitted as described above in preparing the Final EIS. DoN intends to issue the

Final EIS in November 2010, at which time a Notice of Availability will be published in the **Federal Register** and local media. A Record of Decision is expected in December 2010.

Copies of the DEIS are available for public review at the following libraries in North Carolina:

- Havelock-Craven County Public Library, 301 Cunningham Boulevard, Havelock;
- Bogue Banks Public Library, 320 Salter Path Rd., Suite W Pine Knoll Shores;
- Carteret County Public Library, 1702 Live Oak Street, Suite 100, Beaufort;
- Emerald Isle Library, 100 Leisure Lane, Emerald Isle; Western Carteret Public Library, 230 Taylor Notion Road, Cape Carteret;
- Newport Public Library, 210 Howard Boulevard, Newport;
- Pamlico County Library, 603 Main Street, Bayboro;
- New Bern-Craven County Public Library, 400 Johnson Street, New Bern; and
- Onslow County Public Library, 58 Doris Avenue East, Jacksonville.

In South Carolina, copies of the DEIS are available at:

- Beaufort County Library, 311 Scott Street, Beaufort;
- Hilton Head Island Library, 11 Beach City Road, Hilton Head Island;
- Beaufort County Library, 1862 Trask Parkway, Lobeco; and
- Bluffton Community Library, 42 Bamberg Drive, Bluffton.

In Georgia, copies of the DEIS are available at:

- Ida Hilton Public Library, 1105 Wayne Street, Darien;
- Long County Public Library, 28 S Main Street, Ludowici; and
- Brunswick Glynn County Regional Library, 208 Gloucester Street, Brunswick, GA.

Dated: May 20, 2010.

A. M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–12632 Filed 5–25–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 25, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 21, 2010.

James Hyler,

Acting Director, Information Collection Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: Extension.
Title: Open Innovation Web Portal.
Frequency: On Occasion.
Affected Public: Businesses or other for-profit; Federal Government; Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 4,850.
Burden Hours: 12,327.

Abstract: The U.S. Department of Education's (ED) Office of Innovation and Improvement (OII) has developed a Web-based platform, the Open Innovation Web Portal (Portal), to support communication and collaboration among a wide range of key education stackholders, including practitioners, funders, and the general public. This platform, which is currently operating under emergency clearance, allows geographically dispersed but like-minded entities to discover each other and work together to address some of the most intractable challenges in education. OII promotes this platform as a tool for use with the Investing in Innovation grant program (i3), which was established as the "Innovation Fund" in the "American Recovery and Reinvestment Act of 2009" (ARRA), signed into law by the President on February 17, 2009. This new program will provide $650,000,000 in competitive grants to Local Education Agencies (LEAs), non-profit organizations working in collaboration with LEAs, or non-profit organizations working in collaboration with a consortium of schools. The Department must obligate funds to i3 grantees before the end of the fiscal year 2010, September 30, 2010. The Department also plans for the Portal to remain operational after i3 funding is awarded so that there is an ongoing community that focuses on innovation in education. Part of our intent in implementing the i3 program is to identify innovative new approaches proposed by individuals and organizations that have previously had limited experience in obtaining grants in the education sector yet have promising evidence-based ideas for improving American education. These applicants in particular face challenges in identifying schools or LEAs with which to partner given their limited experience in the field. Further, organizations without existing relationships in education may find it difficult to secure the private sector matching funds required of all grantees under ARRA. Receiving OMB's approval for an extension Receiving OMB's approval for an extension of the PRA clearance will allow continued operation of the Portal, which currently has over 3000 members, and support improved student achievement through school improvement and reform, a key departmental goal.

Requests for copies of the information collection submission for OMB review

may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4305. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–12654 Filed 5–25–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 25, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 21, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of the Secretary

Type of Review: Extension.

Title: Streamlined Clearance Process for Discretionary Grant Information Collections.

Frequency: Annually.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.
Burden Hours: 1.

Abstract: Section 3505(a)(2) of the Paperwork Reduction Act (PRA) of 1995 provides the OMB Director authority to approve the steamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in January of 1997. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by two months or 60 days. This is desirable for two major reasons: it would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants. This is a request to extend the clearance process for discretionary grant information collections, and continue to be streamlined in the following manner: the clearance process begins when ED submits the collection to OMB and, simultaneously, publishes a 30-day public comment period notice in the **Federal Register**. OMB has 60 days, following the beginning of the public comment period, to reach a decision on the collection.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4250. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–12655 Filed 5–25–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.007, 84.032, 84.033, 84.038, 84.063, 84.069, 84.268, 84.375, 84.376, and 84.37]

Student Assistance General Provisions, Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant, National Science and Mathematics Access To Retain Talent Grant, and Teacher Education Assistance for College and Higher Education Programs

ACTION: Notice of deadline dates for receipt of applications, reports, and other records for the 2009–2010 award year.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from institutions and applicants for the Federal student aid programs authorized under Title IV of the Higher Education

Act of 1965, as amended, for the 2009–2010 award year. The Federal student aid programs include the Federal Supplemental Educational Opportunity Grant, Federal Family Education Loan, Federal Work-Study, Federal Perkins Loan, Federal Pell Grant, Leveraging Educational Assistance Partnership, William D. Ford Federal Direct Loan, Academic Competitiveness Grant (ACG), National Science and Mathematics Access to Retain Talent Grant (National SMART Grant), and Teacher Education Assistance for College and Higher Education (TEACH) programs.

These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help them pay their educational costs.

Deadline and Submission Dates: See Tables A, B, and C at the end of this notice.

Table A—Deadline Dates for Application Processing and Receipt of Student Aid Reports (SARs) or Institutional Student Information Records (ISIRs) by Institutions

Table A provides information and deadline dates for application processing, including receipt of the Free Application for Federal Student Aid (FAFSA) and corrections to and signatures for the FAFSA, receipt of SARs and ISIRs, and receipt of verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2010, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, changes of addresses or schools, or requests for a duplicate SAR is September 21, 2010. Verification documents must be received by the institution no later than the earlier of 120 days after the student's last date of enrollment or September 28, 2010.

For all Federal student aid programs except Parent PLUS, a SAR or ISIR with an official expected family contribution must be received by the institution no later than the earlier of the student's last date of enrollment or September 28, 2010. For purposes of only the Federal Pell Grant, ACG, or National SMART Grant programs, a valid SAR or valid ISIR for a student not meeting the conditions for a late disbursement must be received no later than the earlier of the student's last date of enrollment or September 28, 2010. A valid SAR or valid ISIR for a student meeting the conditions for a late disbursement under the Federal Pell Grant, ACG, or National SMART Grant programs must be received according to the deadline dates provided in Table A.

In accordance with the regulations in 34 CFR 668.164(g)(4)(i), an institution may not make a late disbursement later than 180 days after the date of the institution's determination that the student withdrew or, for a student who did not withdraw, as provided in 34 CFR 668.22, 180 days after the date the student otherwise became ineligible. Table A provides that an institution must receive a valid SAR or valid ISIR no later than 180 days after its determination of a student's withdrawal or, for a student who did not withdraw, 180 days after the date the student otherwise became ineligible, but not later than September 28, 2010.

Table B—Federal Pell Grant, ACG, and National SMART Grant Programs Submission Dates for Disbursement Information by Institutions

Table B provides the earliest submission and deadline dates for institutions to submit Federal Pell Grant, ACG, and National SMART Grant disbursement records to the Department's Common Origination and Disbursement (COD) System and deadline dates for requests for administrative relief if the institution cannot meet the established deadline for specified reasons.

In general, an institution must submit Federal Pell Grant, ACG, or National SMART Grant disbursement records no later than 30 days after making a Federal Pell Grant, ACG, or National SMART Grant disbursement or becoming aware of the need to adjust a student's previously reported Federal Pell Grant, ACG, or National SMART Grant disbursement. In accordance with the regulations in 34 CFR 668.164, we consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger, or (b) pays those funds to a student directly. We consider that Federal Pell Grant, ACG, and National SMART Grant funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department. An institution's failure to submit disbursement records within the required 30-day timeframe may result in an audit or program review finding. In addition, the Secretary may initiate an adverse action, such as a fine or other penalty for such failure.

Table C—Federal Pell Grant Disbursement Information for a Payment Period That Occurs in Two Award Years (Crossover Payment Period)

Table C provides the deadline dates regarding when the receipt of information requires the institution to assign a student's 2010 crossover payment period that occurs in the 2009–2010 and 2010–2011 award years to the award year in which the student would receive a greater Federal Pell Grant payment for the payment period.

In accordance with 34 CFR 690.64, as amended by the final regulations published on October 29, 2009, and effective on July 1, 2010 (74 FR 55902, 55951), an institution must, regardless of a student's enrollment status, assign a crossover payment period (a payment period that includes both June 30 and July 1) to the award year in which the student would receive the greater payment for the crossover payment period based on the information available at the time the student's Federal Pell Grant is initially calculated. Table C sets a September 10, 2010 deadline for the receipt of any information that would require an institution to reassign the 2010 crossover payment period to the award year providing the greater payment. During the subsequent period of time but not later than February 1, 2011, an institution may establish a policy concerning reassignment of the 2010 crossover payment period (74 FR 55922).

It is important to note that for the 2010 transition crossover payment period only, an institution is not required to award a Federal Pell Grant to a student from the award year that will provide the greater payment if the institution established a written crossover payment period policy prior to July 1, 2010 and under that policy a student would be awarded a Federal Pell Grant from the 2009–2010 award year without applying the regulations as amended on October 29, 2009 (74 FR 55904).

Other Sources for Detailed Information

We publish a detailed discussion of the Federal student aid application process in the following publications:

- *2009–2010 Funding Education Beyond High School.*
- *2009–2010 Counselors and Mentors Handbook.*
- *2009–2010 ISIR Guide.*
- *2009–2010 Federal Student Aid Handbook.*

Additional information on the institutional reporting requirements for the Federal Pell Grant, ACG, and National SMART Grant programs is contained in the 2009–2010 *COD Technical Reference.* You may access this reference by selecting the "Publications" link at the Information for Financial Aid Professionals Web site at: *http://www.ifap.ed.gov.*

Applicable Regulations: The following regulations apply: (1) Student Assistance General Provisions, 34 CFR part 668, (2) Federal Pell Grant Program, 34 CFR part 690, and (3) Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant Programs, 34 CFR part 691.

FOR FURTHER INFORMATION CONTACT: Harold McCullough, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, Room 113E1, Washington, DC 20202–5345. Telephone: (202) 377–4030.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1070a, 1070a–1, 1070b–1070b–4, 1070c–1070c–4, 1070g, 1071–1087–2, 1087a–1087j, and 1087aa–1087ii; 42 U.S.C. 2751–2756b.

Dated: May 20, 2010.

William J. Taggart,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 2010–12558 Filed 5–25–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Correction

In notice document 2010–7818 beginning on page 17703 in the issue of Wednesday, April 7 make the following correction:

On page 17704, in the first column, immediately after the 10th line, insert the following text:

Accession Number: 20100329–0203.

Comment Date: 5 p.m. Eastern Time on Friday, April 16, 2010.

Docket Numbers: ER10–941–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Letter Agreement Regarding Comprehensive Seams Agreement Between Entergy Services, In and SPP.

Filed Date: 03/26/2010.

[FR Doc. C1–2010–7818 Filed 5–25–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[131 FERC ¶ 61,161; Docket No. RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 19, 2010.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG), plus one point three percent (PPI+1.3). The Commission determined in an "Order Establishing Index For Oil Price Change Ceiling Levels" issued March 21, 2006, that PPI+1.3 is the appropriate oil pricing index factor for pipelines to use.[1]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPI–FG in May of each calendar year. The annual average PPI–FG index figures were 177.1 for 2008 and 172.5 for 2009.[2] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2008 to 2009, plus 1.3 percent, is negative 0.012974.[3] Oil pipelines must multiply their July 1, 2009, through June 30, 2010, index ceiling levels by positive 0.987026[4] to compute their index ceiling levels for July 1, 2010, through June 30, 2011, in accordance with 18 CFR 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, 1995,[5] *see Explorer Pipeline Company,* 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, please contact the Commission's Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@ferc.gov*), or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E–Mail the Public Reference Room at *public.referenceroom@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12622 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

[1] 114 FERC ¶ 61,293 at P 2 (2006).

[2] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at *http://www.bls.gov/ppi/home.htm.* To obtain the BLS data, scroll down to "PPI Databases" and click on "Top Picks" of the Commodity Data (Producer Price Index—PPI). At the next screen, under the heading "Producer Price Index/PPI Commodity Data," select the first box, "Finished goods—WPUSOP3000," then scroll all the way to the bottom of this screen and click on Retrieve data.

[3] [172.5 − 177.1]/177.1 = (− 0.025974) + .013 = (− 0.012974)

[4] 1 + (− 0.012974) = 0.987026

[5] For a listing of all prior multipliers issued by the Commission, see the Commission's Web site, *http://www.ferc.gov/industries/oil/gen-info/pipeline-index.asp.*

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings # 1

May 17, 2010.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC10–69–000.

Applicants: Wisconsin Electric Power Company, Wisconsin Power and Light Company.

Description: Application of Wisconsin Electric Power Company and Wisconsin Power and Light Company for Transaction Approval pursuant to Section 203.

Filed Date: 05/14/2010.

Accession Number: 20100514–5156.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1699–010.

Applicants: Pilot Power Group, Inc.

Description: Pilot Power Group submits letter re Request for category seller status classification pursuant to Order 679 *et al.*

Filed Date: 05/14/2010.

Accession Number: 20100514–0022.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1090–000.

Applicants: Commercial Energy of Montana Inc.

Description: Commercial Energy of Montana Inc. submits an Amendment to its Application for Market-Based Rate Authority.

Filed Date: 05/14/2010.

Accession Number: 20100514–5122.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1245–000.

Applicants: Pennsylvania Electric Company.

Description: Pennsylvania Electric Company submits tariff filing per 35.12: Market-Based Power Sales Tariff to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5039.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1246–000.

Applicants: Consolidated Edison Energy, Inc.

Description: Consolidated Edison Energy, Inc. submits tariff filing per 35.12: Baseline filing of Consolidated Edison Energy, Inc. MBR to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5058.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1247–000.

Applicants: Commonwealth Edison Company.

Description: Commonwealth Edison Company of Indiana, Inc. submits ministerial revisions to Attachment H–13A of the PJM Interconnection, LLC Open Access Transmission tariff.

Filed Date: 05/14/2010

Accession Number: 20100514–0223.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1248–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits its Capital Projects Report and schedule of the unamortized costs of the ISO's funded capital expenditures for the quarter ending 3/31/10.

Filed Date: 05/14/2010.

Accession Number: 20100514–0219.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1249–000.

Applicants: Xcel Energy Services Inc.

Description: Public Service Company of Colorado submits an Agreement for Installation of Boundary Meeting and Balancing Authority Arrangements for Tri-State's Henry Lake Substation.

Filed Date: 05/14/2010.

Accession Number: 20100514–0220.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1250–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits an Amendment 1 to their contract with their External market Monitor, Potomac Economics, Ltd.

Filed Date: 05/14/2010.

Accession Number: 20100514–0221.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1251–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits revisions to the Credit Policy in Attachment L of the Open Access Transmission, Energy and Operating Reserve markets tariff, FERC Tariff, Fourth Revised Vol 1.

Filed Date: 05/14/2010.

Accession Number: 20100514–0222.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1252–000.

Applicants: Consolidated Edison Solutions, Inc.

Description: Consolidated Edison Solutions, Inc. submits tariff filing per 35: Compliance filing of Consolidated Edison Solutions, Inc. to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5089.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1253–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc. submits tariff filing per 35.12: Baseline filing of MBR Tariff Orange and Rockland Utilities, Inc. to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5091.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1254–000.

Applicants: Old Dominion Electric Cooperative.

Description: Old Dominion Electric Cooperative submits the First Revised Sheet 300JJ to the Open Access Transmission Tariff of PJM Interconnection, LLC, effective 6/1/10.

Filed Date: 05/14/2010.

Accession Number: 20100514–0228.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1255–000.

Applicants: Cleco Power LLC.

Description: Cleco Power LLC submits Notice of Cancellation of the Electric System Interconnection Agreement Between Cleco and the City of Alexandria dated 5/13/96.

Filed Date: 05/14/2010.

Accession Number: 20100514–0227.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1256–000.

Applicants: Conectiv Atlantic Generation, LLC.

Description: Conectiv Atlantic Generation, LLC submits its proposed Conectiv, FERC Electric Tariff, Original Volume 2 and associated cost support etc.

Filed Date: 05/14/2010.

Accession Number: 20100514–0226.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1257–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits tariff filing per 35.12: WVPA Baseline—FERC Electric Tariff Volume No. 2 to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5134.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1258–000.

Applicants: Wabash Valley Energy Marketing, Inc.

Description: Wabash Valley Energy Marketing, Inc. submits tariff filing per 35.12: WVEM Baseline—FERC Electric Tariff Volume No. 1 to be effective 5/14/2010.

Filed Date: 05/14/2010.

Accession Number: 20100514–5135.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1259–000.

Applicants: Pennsylvania Power Company.

Description: Pennsylvania Power Company submits tariff filing per 35.12: Market-Based Rate Power Tariff, to be effective 5/14/2010.

Filed Date: 05/17/2010.

Accession Number: 20100517–5012.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1260–000.

Applicants: Metropolitan Edison Company.

Description: Metropolitan Edison Company submits tariff filing per 35.12: Market-Based Power Sales Tariff to be effective 5/14/2010.

Filed Date: 05/17/2010.

Accession Number: 20100517–5018.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1262–000.

Applicants: The Detroit Edison Company.

Description: The Detroit Edison Company submits tariff filing per 35.12: Detroit Edison—Baseline Tariff Filing, to be effective 5/17/2010.

Filed Date: 05/17/2010.

Accession Number: 20100517–5040.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1263–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits letter agreement between SCE and Nextera Energy resources under ER10–1263.

Filed Date: 05/17/2010.

Accession Number: 20100517–0205.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–12611 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

May 7, 2010.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP00–257–001.

Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits Annual Actual Fuel Use Report for the period of 1/1/09 through 12/31/09.

Filed Date: 04/15/2010.

Accession Number: 20100416–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: RP09–148–004.

Applicants: Wyoming Interstate Company, LLC.

Description: Wyoming Interstate Company, LLC submits Eighteenth Revised Sheet No. 1 *et al.,* FERC Gas Tariff, Second Revised Volume No 2.

Filed Date: 04/19/2010.

Accession Number: 20100420–0202.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 12, 2010.

Docket Numbers: RP09–447–005.

Applicants: Monroe Gas Storage Company, LLC.

Description: Monroe Gas storage Company, LLC submits the Substitute First Revised Sheet 331.

Filed Date: 05/05/2010.

Accession Number: 20100506–0211.

Comment Date: 5 p.m. Eastern Time on Monday, May 17, 2010.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12619 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 18, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–456–023; ER06–954–019; ER06–1271–018; ER07–424–014; EL07–57–009; ER06–880–018; ER07–1186–003; ER08–229–003; ER08–1065–003; ER09–497–004; ER10–268–003.

Applicants: PJM Interconnection, L.L.C.

Description: Motion of PJM Interconnection, LLC.

Filed Date: 05/14/2010.

Accession Number: 20100514–5163.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–745–003.

Applicants: PacifiCorp.

Description: PacifiCorp submits revision to Attachment C of its Open Access Transmission Tariff.

Filed Date: 05/17/2010.

Accession Number: 20100518–0209.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–805–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company's Response to the Commission's Request for Additional Information.

Filed Date: 05/14/2010.

Accession Number: 20100514–5081.

Comment Date: 5 p.m. Eastern Time on Friday, May 28, 2010.

Docket Numbers: ER10–1129–001; ER10–1130–001; ER10–1131–001.

Applicants: U.S. Gas & Electric, Inc.; Energy Services Providers, Inc; ESPI New England, Inc.

Description: Amendment to Application of US Gas & Electric, Inc *et al.* (Applicants) for market-based rate authority and granting of Waivers and Blanket Authorizations.

Filed Date: 05/14/2010.

Accession Number: 20100514–0224.

Comment Date: 5 p.m. Eastern Time on Monday, May 24, 2010.

Docket Numbers: ER10–1223–001.

Applicants: DTE Energy Trading, Inc.

Description: DTE Energy Trading, Inc. submits tariff filing per 35: DTE Energy Trading—Compliance Filing to be effective 5/14/2010.

Filed Date: 05/18/2010.

Accession Number: 20100518–5066.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Docket Numbers: ER10–1261–000.

Applicants: E. ON U.S. LLC.

Description: E. ON U.S. LLC submits unexecuted interconnection agreement with the City Utility Commission of the City of Owensboro.

Filed Date: 05/14/2010.

Accession Number: 20100517–0208.

Comment Date: 5 p.m. Eastern Time on Friday, June 4, 2010.

Docket Numbers: ER10–1265–000.

Applicants: Virginia Electric & Power Company.

Description: Virginia Electric & Power Company submit notice of cancellation and a revised service agreement to cancel a Standard Large Generator Interconnection Agreement with Dominion et al.

Filed Date: 05/17/2010.

Accession Number: 20100518–0201.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1266–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc *et al.* submits executed non conforming Standard Large Generator Interconnection Agreement *et al.*, effective 5/31/10 under ER10–1266.

Filed Date: 05/17/2010.

Accession Number: 20100518–0208.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1267–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits Large Generator Interconnection Facilities Maintenance Agreement, designated as Service Agreement No 647.

Filed Date: 05/17/2010.

Accession Number: 20100518–0207.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1270–000; ER10–1271–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits certain revisions and amendments to FPL Rate Schedule FERC 312, which is the Short-Term Agreement for Partial Electric Requirements Service etc.

Filed Date: 05/17/2010.

Accession Number: 20100518–0212.

Comment Date: 5 p.m. Eastern Time on Monday, June 7, 2010.

Docket Numbers: ER10–1272–000.

Applicants: Orange and Rockland Utilities, Inc.

Description: Orange and Rockland Utilities, Inc. submits tariff filing per 35.12: Baseline Filing of Orange and Rockland OATT to be effective 5/18/2010 under ER10–1272 Filing Type: 370

Filed Date: 05/18/2010.

Accession Number: 20100518–5086.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 8, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–12613 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

May 14, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER07–397–005.

Applicants: ISO New England Inc. and New England Power Pool.

Description: ISO New England Inc *et. al* submit revision to Section III.13 of the ISO Tariff in response to the compliance requirement in the Commission's order issued in 2/28/07.

Filed Date: 05/12/2010.

Accession Number: 20100513–0201.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 02, 2010.

Docket Numbers: ER10–958–001.

Applicants: Lockhart Power Company.

Description: Lockhart Power Company submits revisions to its 3/30/10 filing to revise its FERC Electric Tariff, Original Volume No 1 effective 5/1/10.

Filed Date: 05/13/2010.

Accession Number: 20100513–0232.

Comment Date: 5 p.m. Eastern Time on Monday, May 24, 2010.

Docket Numbers: ER10–966–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits amendments to the ISO's amendment to the ISO Tariff filed on 3/31/10.

Filed Date: 05/13/2010.

Accession Number: 20100514–0204.

Comment Date: 5 p.m. Eastern Time on Monday, May 24, 2010.

Docket Numbers: ER10–1029–001; ER10–1030–001, ER10–1031–001.

Applicants: West Oaks Energy LP, West Oaks Energy NY/NE, LP, Crestwood Energy, LP.

Description: West Oaks Energy, LP *et. al* submits revised application for Market Based Rate Authorizations, Designation of Category 1 Status, and Request for Waivers and Blanket Approvals.

Filed Date: 05/13/2010.

Accession Number: 20100514–0203.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Docket Numbers: ER10–1234–000; ER10–1235–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Co submits notice of cancellation of its FERC Electric Coordination Tariff No 1 and FERC Electric Tariff Volume No 4.

Filed Date: 05/13/2010.

Accession Number: 20100513–0235.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Docket Numbers: ER10–1238–000.

Applicants: Niagara Mohawk Power Corporation.

Description: Niagara Mohawk Power Corporation submits Original Service Agreement 1578 with Entergy Fitzpatrick, LLC.

Filed Date: 05/13/2010.

Accession Number: 20100513–0225.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Docket Numbers: ER10–1239–000.

Applicants: Interstate Power and Light Company.

Description: Interstate Power and Light Company submits changes in depreciation rates related to non-clear production service.

Filed Date: 05/13/2010.

Accession Number: 20100513–0226.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Docket Numbers: ER10–1243–000.

Applicants: Trans-Allegheny Interstate Line Company.

Description: Trans-Allegheny Interstate Line Co. submits PJM Interconnection LLC's FERC Electric Tariff, Sixth Revised Volume 1.

Filed Date: 05/13/2010.

Accession Number: 20100513–0233.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Docket Numbers: ER10–1244–000.

Applicants: Midwest Independent System Operator, Inc.

Description: Midwest Independent System Operator, Inc submits an Amended and Restated General Facilities Agreement among MidAmerican Energy Company, Central Iowa Power Cooperative *etc.*

Filed Date: 05/13/2010.

Accession Number: 20100513–0234.

Comment Date: 5 p.m. Eastern Time on Thursday, June 03, 2010.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES10–40–000.

Applicants: Monongahela Power Company.

Description: Monongahela Power Company Section 204 Application.

Filed Date: 04/30/2010.

Accession Number: 20100430–5487.

Comment Date: 5 p.m. Eastern Time on Friday, May 21, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–12612 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–68–000]

Resale Power Group of Iowa, WPPI Energy v. ITC Midwest LLC, Interstate Power and Light Company; Notice of Complaint

May 19, 2010.

Take notice that on May 18, 2010, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2009), and section 306 of the Federal Power Act, 16 U.S.C. 825(e) (2006), Resale Power Group of Iowa and WPPI Energy (Complainants) filed a formal complaint against ITC Midwest LLC and Interstate Power and Light Company (Respondents), alleging that the Respondents failed to file changes in rates, terms, and conditions of jurisdictional transmission service under the 1991 Operating and Transmission Agreement with Central Iowa Power Cooperative as required by sections 205(c) and 205(d) of the Federal Power Act.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 7, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12621 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD10–11–000]

Frequency Regulation Compensation in the Organized Wholesale Power Markets; Supplemental Notice of Technical Conference

May 19, 2010.

On April 27, 2010, the Commission issued a Notice (April 27 Notice) scheduling a staff technical conference in the above-captioned proceeding. As stated in the April 27 Notice, the conference will provide a forum to consider issues related to frequency regulation compensation in organized electric markets. The technical conference will be held on May 26, 2010, from 9 a.m. to 1 p.m. (EST), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

The agenda for this conference is attached. If any changes occur, the revised agenda will be posted on the calendar page for this event on the Commission's Web site, *http://www.ferc.gov,* prior to the event.

Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). They will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For more information about this conference, please contact:

Tatyana Kramskaya (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6262, *Tatyana.Kramskaya@ferc.gov.*

Eric Winterbauer (Legal Information), Office of the General Counsel—Energy Markets, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8329, *Eric.Winterbauer@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–12620 Filed 5–25–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2003–0019; FRL–9155–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Clean Watersheds Needs Survey (Renewal); ICR No. 0318.12; OMB Control No. 2040–0050

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on January 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 26, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2003–0019, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: OW-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4104T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket at Public Reading Room, Room B102, EPA West

Building, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2003–0019. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Michael Plastino, Municipal Support Division, Office of Wastewater Management, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; phone number: 202–564–0682; fax number: 202–501–2397; email address: *cwns@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2003–0019, which is available for online viewing at *http://www.regulations.gov,,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov,* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected Entities: Entities potentially affected by this action are state governments and publicly owned wastewater treatment facilities.

Title: Clean Watersheds Needs Survey (CWNS) 2012 (Renewal).

ICR numbers: EPA ICR No. 0318.12, OMB Control No. 2040–0050.

ICR status: This ICR is currently scheduled to expire on January 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Clean Watersheds Needs Survey (CWNS) is required by Sections 205(a) and 516(b)(1) of the Clean Water Act (*http://www.epa.gov/cwns*). It is a periodic inventory of existing and proposed publicly owned wastewater treatment works (POTWs) and other water pollution control facilities in the United States, as well as an estimate of how many POTWs need to be built. The CWNS is a joint effort of EPA and the States and Territories. The Survey records cost and technical data associated with POTWs and other water pollution control facilities, existing and proposed, in the United States. The State respondents who provide this information to EPA are State agencies responsible for environmental pollution control. No confidential information is used, nor is sensitive information protected from release under the Public Information Act. EPA achieves national consistency in the final results through the

application of uniform guidelines and validation techniques.

For CWNS 2012, EPA is offering States two options for participating: (1) The Traditional Method and (2) the Gap Approach Option. The Gap Approach Option enables a State to comprehensively assess at the State level, for various facility size groupings, wastewater facility revenues and capital and operation maintenance (O&M) expenses over 20 years. This comprehensive facility economic analysis supports State and EPA sustainable infrastructure programs. The Traditional Method enables States to assess the capital needs for each facility within the state. This spatially comprehensive assessment of capital needs, along with current and projected populations receiving various levels of wastewater treatment, supports holistic watershed management approaches.

Under the "Traditional Method" of documenting water pollution control needs, states submit capital needs for all facilities in the state:

- Wastewater Treatment Plants.
- Separate Sewer Systems.
- Combined Sewer Systems.
- Stormwater Management.
- Decentralized Wastewater Treatment.
- Nonpoint Source (NPS) Control.

For each need, states submit one or more supporting documents (Facility Plan, Engineer's Estimate, etc.). Revenue and operation and maintenance (O&M) needs data are not collected in the Traditional Method.

Under the "Gap Approach" to documenting water pollution control needs, states submit capital & O&M needs and revenues for a sample of these facilities:

- Wastewater Treatment Plants.
- Separate Sewer Systems.
- Combined Sewer Systems.

For these sampled facilities, revenues are submitted and asset condition analysis data is used to estimate capital and O&M needs. Results from the sample set of facilities are extrapolated to provide State level estimates at ±25% accuracy. Average sample rates are:

- 10–25% for facilities serving less than 10,000 people.
- 30–60% for facilities serving between 10,000 and 100,000 people.
- 100% (census survey) for the largest 3% of facilities in each state.

EPA is interested in comments and information on an alternate sample design that would provide state level estimates at ±10% accuracy. Under this alternative, average sample rates would be:

- 15–45% for facilities serving less than 10,000 people.
- 35–80% for facilities serving between 10,000 and 100,000 people.
- 100% (census survey) for the largest 3% of facilities in each state.

Since in CWNS the Gap Approach is only applicable to Wastewater Treatment Plants, Separate Sewer Systems, and Combined Sewer Systems, States selecting the Gap Approach will use the Traditional Method for all other facilities (Stormwater Management, Decentralized Wastewater Treatment, NPS Control).

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.55 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Frequency of response: Every 4 years.

Estimated total number of potential respondents: 56 States (States, District of Columbia, U.S. Territories) and 5,122 Local Facilities.

Estimated total average number of responses for each State respondent: 271.

Estimated total annual State burden hours: 7,053.

Estimated total average number of responses for each Local Facility respondent: 5,122.

Estimated total annual Local Facility burden hours: 2,031.

Estimated total annual costs: $284,372 for States and $85,666 for Local Facilities. These costs are all capital costs, there are no maintenance and operational costs.

Are there changes in the estimates from the last approval?

There is an increase of 277 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. The 277 hour increase is the net result of a decrease of 182 State burden hours combined with an increase of 459 hours in Local Facility burden hours. These changes are estimated impacts of 10 States selecting the Gap Approach Option. In this option, total state effort is projected to decrease slightly due to the sampling design (the greater State effort per facility is slightly more than offset by entering data for a sampled portion of facilities rather than for all facilities). For Local Facilities, the projected increased burden results from the extra per facility effort being slightly more than the burden saved by switching from a census to a sampling approach.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 20, 2010.

Sheila E. Frace,

Acting Director, Office of Wastewater Management.

[FR Doc. 2010–12651 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9154–9]

National Advisory Council for Environmental Policy and Technology Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Charter Renewal.

Notice is hereby given that the Environmental Protection Agency (EPA) has determined that, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, the National Advisory Council for Environmental Policy and Technology (NACEPT) is a necessary committee which is in the public interest. Accordingly, NACEPT will be renewed for an additional two-year period. The purpose of NACEPT is to provide advice and recommendations to the

Administrator of EPA on a broad range of environmental policy, technology and management issues. Inquiries may be directed to Sonia Altieri, U.S. EPA, (Mail Code 1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–0243, or *altieri.sonia@epa.gov.*

Dated: May 20, 2010.

Rafael DeLeon,

Director, Office of Cooperative Environmental Management.

[FR Doc. 2010–12650 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0434; FRL–8826–6]

Inorganic Nitrates–Nitrite, Carbon and Carbon Dioxide, and Sulfur Registration Review; Draft Ecological Risk Assessment and Endangered Species Effects Determination; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's draft ecological risk assessment for the registration review of inorganic nitrates – nitrites, carbon and carbon dioxide, and gas cartridge uses of sulfur, and opens a public comment period on this document. Comments and input may address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to this draft risk assessment. Interested parties may also provide suggestions for mitigation of the risk identified in the draft ecological risk assessment. As part of the registration review process, the Agency has completed a comprehensive draft ecological risk assessment, including an endangered species assessment that identifies those species for which exposure and effects may occur for all inorganic nitrates–nitrites, carbon and carbon dioxide uses, as well as gas cartridge uses of sulfur. The risk assessment includes a species specific analysis and effects determination on 3 of 11 species found in the San Francisco Bay area that are listed as endangered or threatened under the Endangered Species Act (ESA). Concurrent with this public comment opportunity, EPA is initiating informal consultation with the U.S. Fish and Wildlife Service. After reviewing comments received during this public comment period, EPA will issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. The Agency may request further public input on risk mitigation before developing a proposed registration review decision for inorganic nitrates – nitrites, carbon and carbon dioxide, and sulfur. After a revised risk assessment is completed, EPA will also initiate further consultation, as needed, when appropriate, with the U.S. Fish and Wildlife Service regarding potential risks to federally listed threatened or endangered species and their designated critical habitat.

DATES: Comments must be received on or before July 26, 2010.

ADDRESSES: The mailing address for each Chemical Review Manager listed in the table in Unit II. is: Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Submit your comments identified by the docket identification (ID) number for the specific pesticide of interest provided in the table in Unit II. by one of the methods listed below:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID numbers listed in the table in Unit II. for the pesticides you are commenting on. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information contact*: The Chemical Review Manager identified in the table in Unit II. for the pesticide of interest.

For general questions on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the

chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the appropriate Chemical Review Manager listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. Authority

EPA is conducting its registration review of inorganic nitrates – nitrites, carbon and carbon dioxide, and sulfur pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

The pesticides that are the subject of this notice and the Chemical Review Managers are listed in the following table:

TABLE—PESTICIDES AVAILABLE FOR REGISTRATION REVIEW

Docket ID Number	Pesticide name	Chemical Review Manager, Telephone Number, fax number, E-mail Address
EPA–HQ–OPP–2007–1118	Inorganic nitrates—nitrites	Eric Miederhoff (703) 347–8028 (703) 308–7070 *miederhoff.eric@epa.gov*.
EPA–HQ–OPP–2007–0705	Carbon and carbon dioxide	Carissa Cyran (703) 347–8781 (703) 308–7070 *cyran.carissa@epa.gov*
EPA–HQ–OPP–2008–0176	Sulfur	Jose Gayoso (703) 347–8652 (703) 308–7070 *gayoso.jose@epa.gov*

III. Registration Reviews

A. What Action is the Agency Taking?

As directed by FIFRA section 3(g), EPA is reviewing the pesticide registrations for inorganic nitrates – nitrites, carbon and carbon dioxide, and sulfur to ensure they continue to satisfy the FIFRA standard for registration—that is, that inorganic nitrates – nitrites, carbon and carbon dioxide, and sulfur can still be used without unreasonable adverse effects on human health or the environment. Inorganic nitrates – nitrites, carbon and carbon dioxide are active ingredients and are mixed in some cases with sulfur, to create fumigant gas cartridges which release toxic fumes after ignition. These gas producing cartridges are placed in animal burrows to control small mammal pests. EPA has completed a comprehensive draft ecological risk assessment, including an endangered species assessment, for all inorganic nitrate – nitrite, carbon and carbon dioxide uses, as well as gas cartridge

uses of sulfur. All other uses of sulfur will be included in the upcoming ecological risk assessment for the registration review of sulfur, docket EPA–HQ–OPP–2008–0176. The risk assessment includes a species specific analysis and effects determination of the cartridges on 3 of 11 species found in the San Francisco Bay area that are listed as endangered or threatened under the Endangered Species Act (ESA). These species specific effects determinations were conducted in response to litigation brought against EPA by the Center for Biological Diversity in the United States District Court for the Northern District of California (Civ. No. 07–2794–JSC) where sodium nitrate and potassium nitrate were alleged to be of concern.

Pursuant to 40 CFR 155.53(c), EPA is providing an opportunity, through this notice of availability, for interested parties to provide comments and input concerning the Agency's draft ecological risk assessment for inorganic nitrates – nitrites, carbon and carbon dioxide, and gas cartridge uses of sulfur. Such comments and input could address, among other things, the Agency's risk assessment methodologies and assumptions, as applied to this draft risk assessment. Interested parties may also provide suggestions for mitigation of the risk identified in the draft ecological risk assessment.

Concurrent with this public comment opportunity, EPA is initiating informal consultation with the U.S. Fish and Wildlife Service for purposes of validating the list of potentially affected species, to identify the geographic areas in which each species may reside, and to assist EPA in determining how best to assemble information on the baseline status of each species. The ESA regulations provide for two types of consultation; formal and informal. Informal consultation is an optional process that includes discussions, correspondence, etc. between the Services and a Federal agency or a designated non-Federal representative (NFR) to determine whether a Federal action is likely to have an adverse effect on listed species or critical habitat. During informal consultation the Services may suggest modifications to the action that a Federal agency, permit applicant or non-Federal representative could implement to avoid likely adverse effects to listed species or critical habitat. If adverse effects are likely and those effects cannot be addressed through informal consultation, then formal consultation generally occurs. The Agency will consider all comments received during the public comment period and make changes, as appropriate, to the draft ecological risk assessment. EPA will then issue a revised risk assessment, explain any changes to the draft risk assessment, and respond to comments. EPA will also, at that time, initiate further consultation, as needed, when appropriate, with the U.S. Fish and Wildlife Service regarding potential risks to federally listed threatened or endangered species and their designated critical habitat. In the **Federal Register** notice announcing the availability of the revised risk assessment, if the revised risk assessment indicates risks of concern, the Agency may provide an additional comment period for the public to submit suggestions for mitigating the risk identified in the revised risk assessment before developing proposed registration review decisions on inorganic nitrates – nitrites, carbon and carbon dioxide, and sulfur.

B. Docket Content

As described in detail in the Inorganic Nitrate–Nitrite Summary Document (see docket ID number EPA–HQ–OPP–2007–1118), Carbon and Carbon Dioxide Summary Document (see docket ID number EPA–HQ–OPP–2007–0705) the Agency believes that the human health risk assessments completed prior to registration review are adequate, and there are no human health risks that exceed the Agency's level of concern. Thus, no additional human health data are expected to be needed for the registration review of inorganic nitrates – nitrites, carbon and carbon dioxide. In the Sulfur Summary Document (see docket ID number EPA–HQ–OPP–2008–0176) the Agency stated that revised occupational and residential exposure human health assessments for sulfur should be conducted in registration review. These human health assessments are still anticipated for all uses of sulfur, including the cartridge use, and will be included in the upcoming registration review risk assessment.

1. *Other related information.* Additional information on inorganic nitrates – nitrites is available on the Pesticide Registration Review Status webpage for this pesticide, *http://www.epa.gov/oppsrrd1/registration_review/inorganic_nitrate/index.htm.* Additional information on carbon and carbon dioxide is available on the Pesticide Registration Review Status webpage for this pesticide, *http://www.epa.gov/oppsrrd1/registration_review/carbon/index.htm.* Additional information on sulfur is available on the Pesticide Registration Review Status webpage for this pesticide, *http://www.epa.gov/oppsrrd1/registration_review/sulfur/index.htm.* Information on the Agency's registration review program and its implementing regulation is available at *http://www.epa.gov/oppsrrd1/registration_review.*

2. *Information submission requirements.* Anyone may submit data or information in response to this document. To be considered during a pesticide's registration review, the submitted data or information must meet the following requirements:

- To ensure that EPA will consider data or information submitted, interested persons must submit the data or information during the comment period. The Agency may, at its discretion, consider data or information submitted at a later date.
- The data or information submitted must be presented in a legible and useable form. For example, an English translation must accompany any material that is not in English and a written transcript must accompany any information submitted as an audiographic or videographic record. Written material may be submitted in paper or electronic form.
- Submitters must clearly identify the source of any submitted data or information.
- Submitters may request the Agency to reconsider data or information that the Agency rejected in a previous review. However, submitters must explain why they believe the Agency should reconsider the data or information in the pesticide's registration review.

As provided in 40 CFR 155.58, the registration review docket for each pesticide case will remain publicly accessible through the duration of the registration review process; that is, until all actions required in the final decision on the registration review case have been completed.

List of Subjects

Environmental protection, Pesticides and pests, Inorganic nitrates--nitrites, Carbon and carbon dioxide, Sulfur.

Dated: May 17, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–12591 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9153–6]

Draft Transportation Conformity Guidance for Quantitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability; Request for Public Comment.

SUMMARY: EPA is announcing the availability of a draft transportation conformity guidance document for public comment. Once finalized, this guidance would help state and local agencies complete quantitative $PM_{2.5}$ and PM_{10} hot-spot analyses for project-level transportation conformity determinations of certain highway and transit projects. A hot-spot analysis includes an estimation of project-level emissions, air quality modeling, and a comparison to the relevant national ambient air quality standards (NAAQS) in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. The U.S. Department of Transportation (DOT) is EPA's federal partner in implementing the transportation conformity regulation, and EPA coordinated with DOT on the development of this draft guidance.

DATES: Comments must be received on or before July 19, 2010.

ADDRESSES: Interested persons may obtain a copy of the draft guidance from EPA's Office of Transportation and Air Quality Web site at: *http://www.epa.gov/otaq/stateresources/transconf/olicy.htm*

EPA will accept comments as follows:

E-mail: Comments can be sent electronically to the following e-mail address: *PMhotspot-comments@epa.gov*

Mail: Comments sent by mail should be addressed to Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105.

Fax: Comments can also be faxed to the attention of Meg Patulski at (734) 214–4052.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, *e-mail address: patulski.meg@epa.gov, telephone number:* (734) 214–4842, *fax number:* (734) 214–4052.

SUPPLEMENTARY INFORMATION: The contents of this notice are listed in the following outline:

I. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act (CAA) section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects are consistent with ("conform to") the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause or contribute to new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standard(s) (NAAQS) or any interim milestones. Transportation conformity applies to areas that are designated nonattainment and those areas redesignated to attainment after 1990 ("maintenance areas") for transportation-related criteria pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO_2) and particulate matter ($PM_{2.5}$ and PM_{10}).[1]

EPA's transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188) and has subsequently published several amendments.

II. Background on the Draft Guidance

The conformity rule includes a specific requirement that certain transportation projects be analyzed for local air quality impacts (a "hot-spot" analysis), in addition to other conformity requirements. In its March 10, 2006 final rule (71 FR 12468), EPA stated that quantitative $PM_{2.5}$ and PM_{10} hot-spot analyses would not be required until EPA releases hot-spot modeling guidance and an appropriate motor vehicle emissions model is available to conduct such hot-spot analyses.[2] For projects where a hot-spot analysis is required, the conformity rule requires a *qualitative* PM hot-spot analysis until EPA releases guidance on how to conduct *quantitative* PM hot-spot analyses and announces in the **Federal Register** that these requirements are in effect (40 CFR 93.123(b)). In addition, today's draft PM hot-spot modeling guidance is being released for public comment to comply with EPA's obligations under a settlement agreement.[3]

In keeping with the commitment EPA made in its March 2006 final rule (71 FR 12502), this draft guidance was developed in coordination with DOT (Federal Highway Administration and Federal Transit Administration) and with several transportation conformity stakeholder groups. In addition, EPA also worked with the California Air Resources Board (CARB) and the California Department of Transportation (Caltrans) to develop the portions of the guidance relating to the use of CARB's EMFAC2007 model in California.

III. What Is in the Draft Guidance?

The draft PM hot-spot modeling guidance describes conformity requirements for quantitative PM hot-spot analyses; provides technical guidance on estimating project emissions using EPA's MOVES2010 model, California's EMFAC2007 model, and other methods; and outlines how to apply air quality dispersion models for quantitative PM hot-spot analyses. The draft guidance also discusses how to calculate design values for comparison to each PM NAAQS, as well as how to determine which air quality modeling receptors may or may not be appropriate for PM hot-spot analyses.[4] The draft guidance also describes how the interagency consultation process should be used to develop quantitative hot-spot analyses in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. In addition, the draft guidance includes other resources and examples to assist in conducting quantitative PM hot-spot modeling analyses. However, the draft

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

[2] EPA's new motor vehicle emissions model, MOVES2010, was released in December 2009 and is capable of performing project-level emissions analyses from on-road sources. MOVES2010 will be approved for use in quantitative PM hot-spot analyses in areas outside of California when this draft guidance is finalized.

[3] In May 2006, the Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club challenged the March 2006 final rule (*Environmental Defense et al.* v. *Environmental Protection Agency,* No. 06–1164 (DC Cir.)). On May 19, 2007, petitioners and EPA entered into a settlement agreement in which EPA agreed to publish a **Federal Register** notice announcing the availability of the draft guidance for public comment for a period of at least 30 days.

[4] EPA stated in the March 2006 final rule that the PM hot-spot modeling guidance would "consider how projects of air quality concern are predicted to impact air quality at existing and potential $PM_{2.5}$ monitor locations which are appropriate to allow the comparison of predicted $PM_{2.5}$ concentrations to the current $PM_{2.5}$ standards, based on $PM_{2.5}$ monitor siting requirements (40 CFR Part 58)." (71 FR 12471)

guidance does not change transportation conformity rule requirements for hot-spot analyses, such as what types of projects are subject to hot-spot analyses. EPA notes that the guidance, once finalized, would help implement existing requirements in the CAA and conformity rule and is not a regulation.

IV. Request for Comments

EPA is seeking comment on all aspects of the draft PM hot-spot modeling guidance. In particular, EPA is seeking comments on the following:

(1) Does the draft guidance provide sufficient information on how to configure and run MOVES2010 and EMFAC2007 at the project level?

(2) Do the air quality modeling sections of the draft guidance and references to other existing documents provide sufficient detail for air quality modelers to conduct PM hot-spot analyses using AERMOD or CAL3QHCR?

(3) Is there sufficient information in the draft guidance to calculate design values and determine appropriate receptors? If not, what additional information is necessary?

(4) Are there issues that the draft guidance does not address that should be addressed in the final guidance or in other EPA efforts?

(5) What types of outreach, training, and other technical assistance would be helpful in implementing the final guidance?

EPA encourages those submitting comments to provide specific details and/or examples wherever possible.

Dated: May 17, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–12607 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0001; FRL–8825–1]

SFIREG Full Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Association of American Pesticide Control Officials (AAPCO)/ State FIFRA Issues Research and Evaluation Group (SFIREG) Full Committee will hold a 2–day meeting, beginning on June 21, 2010 and ending June 22, 2010. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Monday, June 21, 2010 from 8:30 a.m. to 5 p.m. and 8:30 a.m to 12 noon on Tuesday, June 22, 2010.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at EPA. One Potomac Yard (South Bldg.) 2777 Crystal Dr., Arlington VA. 1st Floor South Conference Room.

FOR FURTHER INFORMATION CONTACT: Ron Kendall, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5561 fax number: (703) 308–1850; e-mail address: *kendall.ron@epa.gov*, or Grier Stayton, SFIREG Executive Secretary, P.O. Box 466, Milford DE 19963; telephone number: (302) 422–8152; fax (302) 422–2435; e-mail address: *aapco-sfireg@comcast.net.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are interested in SFIREG information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. You are invited and encouraged to attend the meetings and participate as appropriate. Potentially affected entities may include, but are not limited to:

Those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug and Cosmetics Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2010–0001. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr*.

II. Background

1. Regional Report Questions and Discussion - Issue Paper Introduction.
2. EQI and POM WC Reports.
3. ASPCRO Issues Update.
4. AAPSE Issues Update.
5. TPPC Issues Update.
6. PPDC Update.
7. Drift PR Notice.
8. Lab Directors PREP Report.
9. NPDES Status/Update.
10. Soil Fumigant Update/Label Review.
11. DfE Criteria/Survey for success.
12. Label Directions - Applicator Interpretation.
13. OECA/OPP Updates.
14. EPA Product Label Quality Assurance Update.
15. Issue Papers - Reg 10 Communication - Case Referrals and Product Quality Issues, status updates.

III. How Can I Request to Participate in this Meeting?

This meeting is open for the public to attend. You may attend the meeting without further notification.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 10, 2010.

William R. Diamond,

Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 2010–12270 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0178; FRL–8828–2]

Spirotetramat; Receipt of Application for Emergency Exemption and Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Nevada Department of Agriculture to use the pesticide spirotetramat (CAS No.

203313–25–1) to treat up to 5,000 acres of onions to control thrips. The applicant is proposing the use of a chemical whose registration was recently cancelled. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 1, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2010–0178, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on–line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2010–0178. EPA's policy is that all comments received will be included in the docket without change and may be made available on–line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; fax number: (703) 605–0781; e-mail address: *grinstead.keri@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their

location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Nevada Department of Agriculture has requested the Administrator to issue a specific exemption for the use of spirotetramat on onions to control thrips. Information in accordance with 40 CFR part 166 was submitted as part of this request, and is available for review at *http://www.regulations.gov* under docket ID number EPA–HQ–2010-0178

This is the first request from this applicant for this use. The rationale for emergency approval of the use in the application is that onion thrips are sucking insects which both directly damage the crop and also vector the plant disease Iris Yellow Spot Virus. The application package for Nevada is available for review at *http://www.regulations.gov* under docket ID number EPA–HQ–2010-0178.

The Applicant proposes to make no more than two applications of Movento (22.4% spirotetramat) on a maximum of 5,000 acres of onions between May and September, 2010 in Nevada. Total amount of pesticide to be used is 50,000 fluid ounces of Movento (800 pounds of spirotetramat).

EPA has decided to open a shortened comment period and solicit input and comments from the public for 5 days. Ordinarily, the length of a comment period for an emergency exemption application is 15 days. However, EPA is shortening this comment period to 5 days because thrips have already begun to appear in Nevada, and once they begin transmitting plant disease control of the disease becomes increasingly difficult. Because of these factors, EPA determined that a 5 day comment period is appropriate.

This notice does not constitute a decision by EPA on the application itself but provides an opportunity for public comment on the application. EPA has determined that publication of a notice of receipt of this application for a specific exemption is appropriate, taking into consideration that the registration of the spirotetramat product that is the subject of this emergency exemption request was recently cancelled as a result of the December 23, 2009 decision of the U.S. District Court for the Southern District of New York vacating its registration on procedural grounds. The vacatur decision is available for review at *http://www.regulations.gov* under docket ID number EPA–HQ–2010-0178.

The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Nevada Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 18, 2010.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–12587 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010-0397; FRL–8825–8]

Notice of Suspension of Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), announces certain Notices of Intent to Suspend issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. Each Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In notice (DCI), which required the registrants of the affected pesticide products containing a certain pesticide active ingredient to take appropriate steps to secure certain data, and following the registrant's failure to submit these data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected product(s). Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registrations under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or 30 days after the date of publication of this notice in the **Federal Register** (if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so), unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV. explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Terria Northern, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7093; e-mail address: *northern.terria@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0397. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are

from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Registrants Issued Notices of Intent to Suspend Active Ingredients, Products Affected, and Date(s) Issued

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS) return receipt requested to the registrants for the products listed in Table 1 of this unit.

TABLE 1. —LIST OF PRODUCTS

Registrant Affected	Active Ingredient	EPA Registration Number	Product Name	Date EPA Issued Notice of Intent to Suspend
Bissell Homecare, Inc.	Benzoic Acid	6297-6	Bissell Acarosan Dust Mite Powder	March 9, 2010
Allegropharma Joachim Ganzer KG	Benzoic Acid	59820-4	Acarosan Moist Powder	March 9, 2010
Allegropharma Joachim Ganzer KG	Benzoic Acid	59820-5	Benzyl Benzoate Miticide Technical	March 9, 2010

III. Basis for Issuance of Notice of Intent to Suspend; Requirement List

The registrants failed to submit the required data or information or to take other appropriate steps to secure the required data for their pesticide products listed in Table 2 of this unit.

TABLE 2.—LIST OF REQUIREMENTS

EPA Registration Numbers	Guideline # as Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
6297-6 59820-4 59820-5	830.1550	Product Identity and Composition	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1600	Description of Materials Used to Produce the Product	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1620	Description of Production Process	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1650	Description of Formulation Process	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1670	Discussion of Formation Impurities	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1700	Preliminary Analysis	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.1750	Certified Limits	August 15, 2008	August 21, 2008	April 30, 2009	No data received

TABLE 2.—LIST OF REQUIREMENTS—Continued

EPA Registration Numbers	Guideline # as Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
6297-6 59820-4 59820-5	830.1800	Enforcement Analytical Method	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6302	Color	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6303	Physical State	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6304	Odor	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6313	Stability to Normal and Elevated Temperatures, Metals and Metal Ions	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6314	Oxidation/Reduction: Chemical Incompatibility	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6315	Flammability	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6316	Explodability	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6317	Storage Stability	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6319	Miscibility	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6320	Corrosion Characteristics	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.6321	Dielectric Breakdown Voltage	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7000	pH	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7050	UV/Visible Absorption	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7100	Viscosity	August 15, 2008	August 21, 2008	April 30, 2009	No data received

TABLE 2.—LIST OF REQUIREMENTS—Continued

EPA Registration Numbers	Guideline # as Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
6297-6 59820-4 59820-5	830.7200	Melting Point/ Melting Range	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7220	Boiling Point/ Boiling Range	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7300	Density/Relative Density/Bulk Density	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7370	Dissociation Constants in Water	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7550	Partition Coefficient (n-Octanol/ H2O), Shake Flask Method	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7570	Partition Coefficient (n-Octanol/ H2O), Estimation by Liquid Chromatograph	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7840	Water Solubility: Column Elution Method; Shake Flask Method	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7860	Water Solubility: Generator Column Method	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	830.7950	Vapor Pressure	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	870.1100	Acute Oral Toxicity	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	870.1200	Acute Dermal Toxicity	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	870.1300	Acute Inhalation Toxicity	August 15, 2008	August 21, 2008	April 30, 2009	No data received

TABLE 2.—LIST OF REQUIREMENTS—Continued

EPA Registration Numbers	Guideline # as Listed in Applicable DCI	Requirement Name	Date EPA Issued DCI	Date Registrant Received DCI	Final Data Due Date	Reason for Notice of Intent to Suspend
6297-6 59820-4 59820-5	870.2400	Acute Eye Irritation	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	870.2500	Acute Dermal Irritation	August 15, 2008	August 21, 2008	April 30, 2009	No data received
6297-6 59820-4 59820-5	870.2600	Skin Sensitization	August 15, 2008	August 21, 2008	April 30, 2009	No data received

While the Agency did not receive a certified mail return receipt from either Brazos Associates, the agent for Allegropharma Joachim Ganzar KG, or from Allegropharma Joachim Ganzar KG for EPA Reg. Nos. 59820–4 and 59820–5, the Agency has correspondence from the company's representative after the PDCI's issuance evidencing that Allegropharma Joachim Ganzar KG received the PDCI and was aware of its requirements.

IV. How to Avoid Suspension Under this Notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this **Federal Register** notice (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the basis of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products. A request for a hearing pursuant to this notice must:

• Include specific objections which pertain to the allowable issues which may be heard at the hearing.

• Identify the registrations for which a hearing is requested.

• Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to:

Hearing Clerk, 1900, Environmental Protection Agency, Pesticide Re-evaluation Division, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30 day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in **DATES** and in Unit IV.1., the Agency

determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Table 2.—List of Requirements in Unit II., for each product by submitting all required supporting data/information described in Table 2. of Unit. II. and in the Explanatory Appendix (in the docket for this **Federal Register** notice) to the following address (preferably by certified mail):

Office of Pesticide Programs, Environmental Protection Agency, Pesticide Re-evaluation Division, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001.

For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30–day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your products. The suspension of the registrations of your company's products pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Table 2 of Unit II.

V. Status of Products that Become Suspended

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrants subject to this notice, including all supplemental registrants of products listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Persons other than the registrants subject to this notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. Nothing in this notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the products listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registrations for your products listed in Table 1 of Unit II. are currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In notice or Section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 14, 2010.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticides Programs.

[FR Doc. 2010–12451 Filed 5–25–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov*.

Agreement No.: 011741–014.

Title: U.S. Pacific Coast-Oceania Agreement.

Parties: ANL Singapore PTE Ltd.; A.P. Moller-Maersk A/S; CMA CGM S.A.; Hamburg-Süd; and Hapag-Lloyd AG.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment increases the maximum size of vessels the parties are authorized to deploy.

Agreement No.: 201207.

Title: Terminal 6 Lease Agreement Between the Port of Portland and ICTSI Oregon, Inc.

Parties: Port of Portland and ICTSI Oregon, Inc.

Filing Party: Paul D. Coleman, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW., 10th Floor; Washington, DC 20036.

Synopsis: The agreement provides for the lease of terminal facilities and other cooperative activities at the Port of Portland, OR.

Dated: May 21, 2010.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–12701 Filed 5–25–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

A Shipping (NVO), 4728 Ivar Avenue, Rosemead, CA 91770. *Officers:* Tuong Q. Lam, CEO, (Qualifying Individual), Young H. Lam, Treasurer. *Application Type:* New NVO License.

Aerocosta Global Group, Inc. dba Aerocosta Global Systems Inc. (NVO), 2463 208th Street, #205, Torrance, CA 90501. *Officers:* Hwa S. Kil, Secretary, (Qualifying

Individual), Darren Kim, President/Treasurer. *Application Type:* New NVO License.

Atlantic Cargo Logistics LLC (OFF & NVO), 120 South Woodland Blvd., #216, Deland, FL 32720. *Officers:* Dietmar Lutte, Manager, (Qualifying Individual) Susan Lutte, Member, *Application Type:* New OFF & NVO License.

Direct Delivery Logistics and Supply, LLC (OFF & NVO) 2006 Wilson Road, Humble, TX 77396. *Officers:* Carolyn Foss, President, (Qualifying Individual) Michael Henley, Executive Vice President. *Application Type:* New OFF & NVO License.

EC Logistics LLC (OFF & NVO), 800 S. Pacific Coast Highway, Suite 8406, Redondo Beach, CA 90277. *Officers:* Li Mei, Manager, (Qualifying Individual), E (Grace) J. Bo, Member Manager. *Application Type:* New OFF & NVO License.

Express Northwest International Freight Services Inc. (OFF), 18335 8th Avenue South, Seattle, WA 98148. *Officers:* Rosemary Weber, Vice President, (Qualifying Individual), Kathleen A. McLean, President. *Application Type:* New OFF License.

GAC Energy & Marine Services LLC (OFF), 16607 Central Green Blvd., Suite 200, Houston, TX 77032. *Officers:* Yalonda R. Henderson, Director, (Qualifying Individual), Walter Bandos, CEO. *Application Type:* New OFF License.

Gilscot-Guidroz International Company, Inc. dba Guidroz, International Transport (OFF & NVO), 409 Sala Avenue, Westwego, LA 70094. *Officers:* Keith R. Guidroz, Sr., President, (Qualifying Individual), Earline Vlois, Vice President. *Application Type:* Business Structure Change.

Hemarc Forwarders, Inc. (OFF & NVO), 8450 NW 68th Street, #1, Miami, FL 33166. *Officers:* Hedda Bronquete, Vice President/Secretary/Treasurer, (Qualifying Individual), Marcelo Bronquete, President. *Application Type:* Add OFF Service.

Innovative Transport Solutions, LLC (OFF & NVO), 755 North Busse Highway, Suite 217, Bensenville, IL 60106. *Officer:* Paul J. Gibbs, Managing Member, (Qualifying Individual). *Application Type:* New OFF & NVO License.

Lupprian's Cargo Express, Inc. (OFF & NVO), 700 Nicholas Blvd., Suite 401, Elk Grove Village, IL 60007. *Officers:* Teresa Chow, President, (Qualifying Individual), Jean Tipsword, Secretary. *Application Type:* New OFF & NVO License.

Milam Freight and Logistics, Inc (OFF & NVO), 3918 Tree Top Drive, Weston, FL 33332. *Officers:* Graeme W. Rodriquez, President, (Qualifying Individual). Wendy A. Rodriquez, Manager. *Application Type:* License Transfer.

OHL Solutions Inc. dba Activsea USA (NVO), 147–80 184th Street, Jamaica, NY 11413, *Officers:* Joseph Kronenberger, Vice President, (Qualifying Individual). Scott McWilliams, CEO. *Application Type:* Business Structure Change.

Reefco Logistics, Inc. dba Reefco Transport dba Foodcareplus (OFF & NVO), 314–021 W. Millbrook Road, Raleigh, NC 27609. *Officer:* Ernest H. Beauregard, President, (Qualifying Individual). *Application Type:* Trade Name Change.

Ruky International Company (NVO), 149 Isabelle Street, Metuchen, NJ 08840. *Officers:* Bharti Parmar, Corporate Officer, (Qualifying Individual), Amarasena A. Rupasinghe, President. *Application Type:* QI Change.

Silver Brilliant Logistic Inc. (NVO), 9471 Cortada Street, #G, El Monte, CA 91733. *Officer:* Linh P. Vien, CEO/Treasurer/Secretary/Chairman, (Qualifying Individual). *Application Type:* New NVO License.

TMO Global Logistics, LLC (OFF & NVO), 200 Garrett Street, Suite M, Charlottesville, VA 22902. *Officer:* Thomas Baldwin, Managing Director, (Qualifying Individual). *Application Type:* QI Change.

Trans-Net, Inc. dba Trans-Net dba Hospitality Logistics International (Off & NVO), 710 N.W. Juniper Street, Suite 100, Issaquah, WA 98027. *Officers:* Peter Moe, Jr., President, (Qualifying Individual). Barbara M. Moe, Secretary. *Application Type:* Trade Name Change.

Trident Transport Group, LLC (OFF), 15810 SW Sundew Drive, Tigard, OR 97223. *Officer:* Matt W. Loutzenhiser, Manager, (Qualifying Individual). *Application Type:* New OFF License.

U & S Shipping, Inc. (OFF & NVO), 112 Philadelphia Way, Winter Springs, FL 32708. *Officer:* Mohammed A. Haseeb, President, (Qualifying Individual). *Application Type:* Add NVO Service.

Wal-Trans Logistics Inc. (NVO), One Cross Island Plaza, Suite 121, Rosedale, NY 11422. *Officer:* Wing Fung Chan, President/VP/Secretary/Treasurer, (Qualifying Individual). *Application Type:* New NVO License.

Dated: May 21, 2010.

Karen V. Gregory,

Secretary.

[FR Doc. 2010–12674 Filed 5–25–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515.

License No.	Name/Address	Date reissued
016914NF	Air Sea Cargo Network, Inc., 7982 Capwell Drive, Oakland, CA 94621	March 12, 2010.
017692NF	American Links Logistics International, Inc., 3591 Highland Drive, San Bruno, CA 94066	April 3, 2010.
019651N	Acorn International Forwarding, Co., 2200 Pacific Coast Highway, Suite 219, Hermosa Beach, CA 90254	April 30, 2010.
021975F	Adora International LLC, 16813 FM 1485, Conroe, TX 77306	April 20, 2010.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–12700 Filed 5–25–10; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR Part 515, effective on the corresponding date shown below:

License Number: 016301NF.
Name: Rical Air Express (Calif.) Inc. dba Rical Logistics.
Address: 9800 S. La Cienega Blvd., Suite 300, Inglewood, CA 90301.
Date Revoked: April 30, 2010.
Reason: Surrendered license voluntarily.

License Number: 017106NF.
Name: Liner Services International, Inc.
Address: 4402 Leisure Time Drive, Diamondhead, MS 39525.
Date Revoked: May 12, 2010.
Reason: Surrendered license voluntarily.

License Number: 018959N.
Name: Wanda Shipping Company, Ltd.
Address: 133–33 Brookville Blvd., Suite 310, Rosedale, NY 11442.
Date Revoked: May 5, 2010.
Reason: Surrendered license voluntarily.

License Number: 019479N.
Name: Cargo Zone Express Corporation dba HS Global Corp.
Address: 6101 Ball Road, Suite 101, Cypress, CA 90630.
Date Revoked: May 10, 2010.
Reason: Surrendered license voluntarily.

License Number: 020930N.
Name: TFMarine, Inc.
Address: 200 Barr Harbor Drive, Suite 400, West Conshohocken, PA 19428.
Date Revoked: May 12, 2010.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 2010–12675 Filed 5–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2010–0083; Sequence 24; OMB Control No. 9000–0138]

Federal Acquisition Regulation; Information Collection; Contract Financing

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0138).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension to a previously approved information collection requirement concerning contract financing.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before July 26, 2010.

ADDRESSES: Submit comments identified by Information Collection 9000–0138 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting "Information Collection 9000–0138" under the heading "Enter Keyword or ID" and selecting "Search". Select the link "Submit a Comment" that corresponds with "Information Collection 9000–0138". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000–0138" on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, Washington, DC 20405. ATTN: Hada Flowers/IC 9000–0138.

Instructions: Please submit comments only and cite Information Collection 9000–0138, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA, (202) 501–4770 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of 1994, Public Law 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DoD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per request for commercial financing and 2 hours per request for performance-based

financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for commercial financing is estimated as follows:

Respondents: 1,000.
Responses per Respondent: 5.
Total Responses: 5,000.
Hours per Response: 2.
Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.
Responses per Respondent: 12.
Total Responses: 6,000.
Hours per Response: 2.
Total Burden Hours: 12,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCA), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: May 17, 2010.

Edward Loeb,

Acting Director, Acquisition Policy Division.

[FR Doc. 2010–12597 Filed 5–25–10; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of New System of Records

AGENCY: General Services Administration

SUMMARY: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

DATES: *Effective Date:* June 25, 2010.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privaccyact@gsa.gov*.

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION: GSA proposes to establish a new system of records subject to the Privacy Act of 1974, 5 U.S.C. 552a. The system will serve as a repository for GSA's Public Buildings Service's documents to reduce paper storage and provide reliable and secure access to documents where and when they are needed. The system contains information related to unsolicited resumes from the public, suitability adjudication letters, training and warrant documents from GSA PBS employees, and other administrative employee documents such as telework agreements.

Dated: May 14, 2010.

Cheryl M. Paige,

Director, Office of Information Management.

SYSTEM NAME:

GSA/PBS- 8 (Electronic Document Management System - EDMS)

SYSTEM LOCATION:

Public Buildings Service (PBS), Enterprise Service Center (ESC) in Chantilly, VA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system are employees and the individuals who submit unsolicited resumes to the Public Buildings Service.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information related to unsolicited resumes from the public, suitability adjudication letters, training and warrant documents for GSA PBS employees, and other administrative employee documents such as telecommute agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 31 of Title 44—Records Management by Federal Agencies (44 U.S.C. 3101 *et seq.*).

PURPOSE:

To establish and maintain an electronic system to serve as a repository for GSA's PBS documents to reduce paper storage and provide reliable and secure access to documents where and when they are needed.

ROUTINE USES OF THE SYSTEM RECORDS, INCLUDING CATEGORIES OF USERS AND THEIR PURPOSES FOR USING THE SYSTEM.

System information may be accessed and used by the employees who place the documents into the system (document owners), designated employees, and managers to store and access unsolicited resumes received from members of the public for job consideration; to maintain documentation of the completion of certain administrative processes such as suitability adjudication letters, training certificates, and warrant documents; and to maintain employee records not included in other systems such as telecommute agreements.

Information from this system also may be disclosed as a routine use:

a. In any legal proceeding, where pertinent, to which GSA, a GSA employee, or the United States is a party before a court or administrative body.

b. To a Federal, State, local or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order when GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

c. To an appeal, grievance, hearing, or complaint examiner; an equal employment opportunity investigator, arbitrator, or mediator; and an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the records.

d. To the Office of Personnel Management (OPM), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) in accordance with their responsibility for evaluating Federal programs.

e. To a member of Congress or his or her staff on behalf of and at the request of the individual who is the subject of the record.

f. To an expert, consultant, or contractor of GSA in the performance of a Federal duty to which the information is relevant.

g. To the National Archives and Records Administration (NARA) for records management purposes.

h. To appropriate agencies, entities when (1) the Agency suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Agency has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity or this system or other systems or programs (whether maintained by GSA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in conjunction with GSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, AND RETAINING, AND DISPOSING OF SYTEM RECORDS:

STORAGE:

All records are stored electronically.

RETRIEVABILITY:

Records are retrievable based on any information contained in the document. Documents are full text indexed by the system.

SAFEGUARDS:

System records are safeguarded in accordance with the requirements of the Privacy Act. Access is limited to authorized individuals with passwords, and the database is maintained behind a firewall certified by the National Computer Security Association.

RETENTION AND DISPOSAL:

System records are retained and disposed of according to GSA records maintenance and disposition schedules and the requirements of the National Archives and Records Administration.

SYSTEM MANAGER AND ADDRESS:

Office of PBS Chief Information Officer (PGA), 1776 G Street NW., Room: 1776 G, Washington, DC 20006.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire if the system contains information about them should contact the system manager at the above address.

RECORD ACCESS PROCEDURES:

Individuals wishing to access their own records should contact the system manager at the address above.

CONTESTING RECORD PROCEDURE:

Individuals wishing to amend their records should contact the system manager at the address above.

RECORD SOURCE CATEGORIES:

The sources of information in the system are the individuals, employees, supervisors, and program managers.

[FR Doc. 2010–12683 Filed 5–25–10; 8:45 am]

BILLING CODE 6820–34–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of Public Health and Science, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of Public Health and Science, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill three positions on the Committee membership which will become available on March 1, 2011.

DATES: Nominations for membership on the Committee must be received no later than July 12, 2010.

ADDRESSES: Nominations should be mailed or delivered to: Dr. Jerry Menikoff, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations will not be accepted by e-mail or by facsimile.

FOR FURTHER INFORMATION CONTACT: Julia Gorey, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852, telephone: 240–453–8141. A copy of the Committee charter and list of the current members can be obtained by contacting Ms. Gorey, accessing the SACHRP Web site at *http://www.hhs.gov/ohrp/sachrp,* or requesting via e-mail at *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee shall advise on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the Committee will provide advice relating to the responsible conduct of research involving human subjects with particular emphasis on special populations such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos and fetuses; individuals and populations in international studies; investigator conflicts of interest; and populations in which there are individually identifiable samples, data, or information.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The Office for Human Research Protections is requesting nominations to fill three positions for voting members of SACHRP. These positions will become vacant on March 1, 2011. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: public health and medicine, behavioral and social sciences, health administration, and biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee will serve as voting members.

The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend and, when applicable, reimbursement for per diem and any travel expenses incurred, for attending Committee meetings and conducting other business in the interest of the Committee.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.,* specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and e-mail address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly

Authority: 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

balanced in terms of points of view represented and the committee's function. Every effort is made to ensure that individuals from a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Nominations must state that the nominee is willing to serve as a member of SACHRP and appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: May 19, 2010.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2010–12636 Filed 5–25–10; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–09BV]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Workload Management Study of Central Cancer Registries—New—Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC currently supports the National Program of Cancer Registries (NPCR), a group of central cancer registries in 45 States, the District of Columbia, and 2 territories. The central cancer registries are data systems that collect, manage, and analyze data about cancer cases and cancer deaths. NPCR-funded central cancer registries submit population-based cancer incidence data to CDC on an annual basis (OMB No. 0920–0469, exp. 1/31/2010). In addition, NPCR-funded registries submit program and performance indicator information to CDC on a semi-annual schedule (OMB No. 0920–0706, exp. 12/31/2011). CDC uses the performance indicators to evaluate the registries' use of funds, their progress toward meeting objectives, and their infrastructure and operational attributes.

Central cancer registries report that they are chronically understaffed, and many registries are concerned about the impact of staff shortages on data quality standards. Staffing patterns are known to vary widely from registry to registry, and registries differ greatly in the number of incidence cases that they process as well as their use of information technology. Cancer registries have asked for clear staffing guidelines based on registry characteristics such as size (*i.e.,* number of new cases annually), degree of automation, and registry-specific reporting procedures.

CDC proposes to conduct a one-time Workload Management Survey (WLM) in 2010 to inform the development of staffing guidelines for central cancer registries. The WLM survey questions do not duplicate the program and performance indicator information reported to CDC on a routine basis. Respondents will be cancer registrars in the NPCR-funded central cancer registries in 45 States and the District of Columbia. Cancer registrars at each registry will maintain a paper-based Work Activities Journal for a one-week period. At the end of the week, the registry manager will consolidate the individual journal worksheets to prepare an aggregate Workload Management Survey for the registry, which will be submitted to CDC electronically.

Results of the WLM survey will enable CDC to assess the workforce necessary for meeting data reporting requirements and to estimate the impact of planned changes to surveillance data reporting. Finally, CDC will develop specific guidance so that cancer registry managers can more effectively measure workload, evaluate the need for staff and staff credentials, and advocate for adequate staffing.

Participation in the survey is voluntary. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
NPCR Registries	Workload Management Survey	46	1	4	184
	Work Activities Journal	368	1	2	736
Total					920

Dated: May 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–12665 Filed 5–25–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: FASD Diagnosis and Intervention Programs in the Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence—New

Since 2001, SAMHSA's Center for Substance Abuse Prevention has been operating a Fetal Alcohol Spectrum Disorder (FASD) Center of Excellence which addresses FASD mainly by providing trainings and technical assistance and developing and supporting systems of care that respond to FASD using effective evidence-based practices and interventions.

Currently the integration of evidence-based practices into service delivery organizations is being accomplished through subcontracts. One such intervention which integrates diagnosis and intervention strategies into existing service delivery organizations is the FASD Diagnosis and Intervention programs targeting children 0–18 years of age. The Diagnosis and Intervention programs use the following 11 data collection tools.

DESCRIPTION OF INSTRUMENTS/ACTIVITY FOR THE DIAGNOSIS AND INTERVENTION PROGRAMS

Instrument/Activity	Description
Screening and Diagnosis Tool	The purpose of the screening and diagnosis tool is to determine eligibility to participate in the SAMHSA FASD Center Diagnosis and Treatment Intervention. The form includes demographic, screening, and diagnostic data.
Positive Monitor Tracking	The Positive Monitor Tracking form is to monitor the outcome of placing a child (ages 0–3 years) on a positive monitor.
Services Child is Receiving at the time of the FASD Diagnosis	The Services Child is Receiving at the time of the FASD Diagnosis form is to record services the child is receiving at the time of an FASD diagnosis.
Services Planned and Provided based on Diagnostic Evaluation	The Services Planned and Provided based on Diagnostic Evaluation form is to record services planned and received based on the diagnostic evaluation.
Services Delivery Tracking Form	The Services Delivery Tracking form is for the services provided during every visit.
End of Intervention/Program Improvement Measure—Case Manager.	The End of Intervention/Program Improvement Measure—Case Manager form is for the case manager to report on the overall improvement in the child as a result of receiving services.
End of Intervention/Program Improvement Measure—Parent/Guardian.	The End of Intervention/Program Improvement Measure—Parent/Guardian form is for the parent/guardian to report on the overall improvement in the child as a result of receiving services.
End of Intervention/Program Customer Satisfaction with Service	The End of Intervention/Program Customer Satisfaction with Service form is to determine customer satisfaction (parents) with the SAMHSA FASD Center Diagnosis and Intervention project.
Outcome Measures (Children 0–7 years)	The Outcome Measures (Children 0–7 years) form is an outcomes measure checklist used to record measures every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.
Outcome Measures (Children 8–18 years)	The Outcome Measures (Children 8–18 years) form is an outcomes measure checklist used to record measures every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.
Lost to follow-up	The Lost to follow-up form is used if the child is no longer accessible for follow-up.

Eight subcontracts were awarded in February 2008 to integrate the FASD Diagnosis and Intervention program within existing service delivery organization sites. Using an integrated service delivery model all sites are screening children using an FASD screening tool, obtaining a diagnostic evaluation, and providing services/interventions as indicated by the diagnostic evaluation. Specific interventions are based upon the individual child's diagnosis. Six of the sites are integrating the FASD Diagnosis and Intervention projects either in a child mental health provider setting or in a dependency court setting and serve children ages 0–7 years. Two of the sites are delinquency courts and serve children 10–18 years of age. Data collection at all sites involves administering the screening and diagnosis tool, recording process level indicators such as type and units of service provided; improvement in functionality and outcome measures such as school performance, stability in housing/placement, and adjudication measures (10–18 yrs only). Data will be collected at baseline, monthly, every six months from start of service to end of service, at end of intervention, at 6 months follow-up, and 12 months follow-up.

Estimated Annualized Burden Hours

Instrument/Activity	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response	Total burden hours per collection
Client Surveys: Children 0–7:					
Screening and Diagnosis Tool	1400	1	1400	0.17	238
Positive Monitor Tracking	450	1	450	0.03	14
Services Child is Receiving at the time of the FASD Diagnosis	750	1	750	0.17	128
Services Planned and Provided based on Diagnostic Evaluation	750	1	750	0.33	248
Services Delivery Tracking Form	750	12	9000	0.08	720
End of Intervention/Program Improvement Measure—Case Manager	750	1	750	0.02	15
End of Intervention/Program Improvement Measure—Parent/Guardian	750	1	750	0.02	15
End of Intervention/Program Customer Satisfaction with Service	750	1	750	0.03	23
Outcome Measures (Children 0–7 years)	750	5	3750	0.08	300
Lost to follow-up	135	1	135	0.03	4
Client Surveys: Children 8–18:					
Screening and Diagnosis Tool	100	1	100	0.17	17
Services Child is Receiving at the time of the FASD Diagnosis	50	1	50	0.17	9
Services Planned and Provided based on Diagnostic Evaluation	50	1	50	0.33	17
Services Delivery Tracking Form	50	12	600	0.08	48
End of Intervention/Program Improvement Measure—Case Manager	50	1	50	0.02	1
End of Intervention/Program Improvement Measure—Parent/Guardian	50	1	50	0.02	1
End of Intervention/Program Customer Satisfaction with Service	50	1	50	0.03	2
Outcome Measures (Children 8–18 years)	50	5	250	0.08	20
Lost to follow-up	15	1	15	0.03	1
TOTAL	7,700	49	19,700	.....	1,821

Written comments and recommendations concerning the proposed information collection should be sent by June 25, 2010 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–5806.

Dated: May 17, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–12643 Filed 5–25–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–09CL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Calibration of the Short Strengths and Difficulties Questionnaire (SDQ) in the National Health Interview Survey (NHIS)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. Section 520 [42 U.S.C. 290bb–31] of the Public Health Service Act, establishes the Center for Mental Health Services (CMHS),

Substance Abuse and Mental Health Services Administration (SAMHSA), and authorizes the CMHS to conduct surveys with respect to mental health. To monitor the prevalence of children and youth with mental health problems, CMHS and the National Institute of Mental Health (NIMH), through a reimbursable agreement with the NCHS have funded questions on children's mental health on the National Health Interview Study (NHIS).

One component of the NHIS is the short Strengths and Difficulties Questionnaire (short SDQ), a module that has obtained data on the mental health of children aged 4–17 years since 2001. As part of its mission, CMHS has undertaken the task of improving its methods for providing national estimates related to child mental health, specifically by conducting studies that determine validity and appropriate cut-points for measuring serious emotional disturbance in children. To ensure that the short SDQ is a valid measure of child mental health, the proposed study calibrates the short SDQ on the NHIS to a standard psychiatric measure. Highly trained clinical interviewers will administer, via telephone, the Child and Adolescent Psychiatric Assessment (CAPA) or the Pre-School Age Psychiatric Assessment (PAPA) to the parents of a sample of children aged 4–17 years identified in the NHIS as having mental health problems. Children aged 12–17 years will also be interviewed using the Child and Adolescent Psychiatric Assessment (CAPA). Clinical interviewers will also administer these assessments to a suitable control group of parents and children. Approximately 460 adults and 300 children will take part in the study. A 24-month clearance is being sought to conduct this study.

Data collected in the follow-up interviews will then be used to calibrate the short SDQ as it is used in the NHIS. Data will not be used to produce national estimates. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of survey	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response in hours	Total burden in hours
Calibration and Control	Parents of children aged 4–8 years	50	1	1	50
	Parents of children aged 9–17 years	180	1	1	180
	Children, aged 12–17	150	1	45/60	113
Total		380			343

Dated: May 20, 2010.

Maryam I. Daneshvar,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2010–12666 Filed 5–25–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of the Underage Drinking Prevention Education Initiatives State Videos Project—New

The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention (CSAP) is requesting Office of Management and Budget (OMB) approval of three new data collection instruments—

- State Video Contacts Form;
- Video Viewers Form; and
- Dissemination Update Online Form.

This new information collection is for the assessment of the 2010–2013 Underage Drinking Prevention Education Initiatives State Videos project. In 2007, four States participated in a pilot study to produce videos on the topic of underage drinking prevention. Based upon the success of those videos, 10 additional States and 1 Territory were provided videos in 2009. From 2010 to 2013, CSAP will invite approximately 10 States/Territories per year to produce their own videos.

Over the next 4 years, CSAP will conduct a process and outcome assessment of this project. The process assessment will focus on the experiences associated with planning and producing the State video. The outcome assessment will examine the effectiveness of the State Videos project in meeting the core project objectives and will capture the State's dissemination efforts. The process and outcome assessments will encompass State videos that will be produced in 2010–2013 and those that were produced in 2007 and 2009. State contacts will be asked to update their dissemination information online if there have been changes in these figures during the previous 6 months, up through 2013. Additionally, data will be collected from viewers of the State videos using an online survey.

The information will be collected from the primary contact employee designated by the State that is agreeing to participate in the production of a video for the State Videos project. The viewers' information will be collected from those who voluntarily decide to complete a short survey after seeing the video.

SAMHSA/CSAP intends to support annual State underage drinking prevention videos. The information collected will be used by SAMHSA/

CSAP to help plan for these annual video productions and provide technical assistance to the participating States. The collected information will also provide a descriptive picture of the initiative and indicate how the videos have been received, as well as some factors that may be associated with successful dissemination outcomes.

The information needs to be collected using a combination of initial telephone interviews to collect process data, followed by online forms to collect outcome and dissemination data. A survey of viewers, collected online, will also be used to assess the effectiveness of the State videos in increasing awareness of the underage prevention activities in these States. This information collection is being implemented under authority of Section 501(d)(4) of the Public Health Service Act (42 USC 290aa).

State staff members will be contacted once the video has been finalized. These State staff members will be asked to complete a short telephone interview that asks questions about the process of producing the State video. The State Video Contacts Form includes nine items about the State video, among which are included the following:

- State's objectives for the video on underage drinking prevention.
- Targeted audiences.
- Satisfaction with technical assistance (TA) received.
- Usefulness of preplanning materials.
- Helpfulness of TA during different phases of production.
- Recommendations for improving the process.
- Recommendations for improving the content of the video.
- Advice to other States interested in producing a video.

If the State has disseminated the video at the time of the initial telephone interview, then they will also be asked to complete the second part of the State Video Contacts Form, which collects information on dissemination outcomes. The State Video Contacts Form includes 19 items about the dissemination activities of the State's video, among which are included the following:

- When they disseminated the video.
- Methods of dissemination.
- Number of people who viewed the video.
- Number of DVDs and videotapes requested.
- Effectiveness of the dissemination methods.
- Factors that contributed to the effectiveness of dissemination.
- Effect of TA received.
- Effect of the video in raising awareness about underage drinking prevention successes in the State.
- Effect of the video in raising awareness about underage drinking prevention challenges in the State.
- Effectiveness of the video in presenting State's/Territory's prevention activities.
- Feedback received.
- Unintended positive outcomes.
- Effect of TA in improving the capacity to provide effective prevention services.

After the State staff member has completed the State Video Contacts Form online, he or she will be requested to update dissemination activities online if there have been any changes during the past 6 months. This form includes seven items, among which are included the following:

- Whether there have been changes in dissemination during the past 6 months.
- Most recent dissemination numbers, by method.
- Facilitation factors.
- Additional feedback.
- Additional unintended positive outcomes.

Data will also be collected from viewers of the State videos. Each State video will include instructions on how to access the Video Viewers Form. The instructions may be a unique URL, or they may consist of instructions on each State's Web site on underage drinking prevention. This information will allow the CSAP to provide feedback to the States on their video and to measure the effectiveness of their video. The Video Viewers Form includes 24 items about the video, among which are included the following:

- When and where they viewed the video.
- Whom they recommended to view the video.
- What they learned from watching the video.
- What actions they may take because of the video.
- Whether they plan to change behaviors and knowledge about their State's activities.

The process assessment of the State videos will be conducted using telephone interviews with the State points of contact. This interview should take 10 minutes (0.167 hours). The outcome assessment of the State videos will be collected using an online form that will be completed by no more than 26 respondents and will require only 1 response per respondent. It will take an average of 10 minutes (0.167 hours) to review the instructions, complete the form, and submit it electronically.

Dissemination updates will be requested from each State point of contact every 6 months if there have been changes during that time period. These updates will be submitted electronically, and it should take approximately 5 minutes (0.083 hours) to review the instructions, complete the short form, and submit it electronically. The burden estimate is based on comments from several potential respondents who completed the online form, submitted it, and provided feedback on how long it would take them to complete it. The respondents will be employees of the State.

A short survey will also be used to collect data from viewers of the State videos. An estimated 1,000 viewers will voluntarily choose to complete this online survey, which will take 10 minutes (0.167 hours) to review, complete, and submit. The viewers are expected to be pulled from the general public.

Form name	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Process Interview	26	1	0.167	4.34
Dissemination Outcome	26	1	0.167	4.34
Dissemination Updates	26	1	0.083	2.16
Viewers Survey	1,000	1	0.167	167
Total	1,078			177.84

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857 *AND* e-mail a copy to: *summer.king@samhsa.hhs.gov.*

Written comments should be received within 60 days of this notice.

Dated: May 17, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–12644 Filed 5–25–10; 8:45 am]

BILLING CODE 4126–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4151–NC]

RIN 0938–AQ04

Medicare Program; Medicare Coverage Gap Discount Program Model Manufacturer Agreement and Announcement of the June 1, 2010 Public Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period contains a draft model agreement for use by the Secretary and manufacturers under the Medicare Coverage Gap Discount Program established by section 3301 of the Patient Protection and Affordable Care Act, as amended by section 1101 of the Health Care and Education Reconciliation Act of 2010. Under the agreement, manufacturers of applicable covered Part D drugs must provide applicable discounts to applicable Medicare beneficiaries for applicable covered Part D drugs while in the coverage gap beginning in 2011. It also announces the June 1, 2010 public meeting regarding the draft model agreement.

DATES: *Meeting Date:* Tuesday, June 1, 2010, 9 a.m. to 5:30 p.m., eastern daylight time (e.d.t.).

Meeting Registration and Request for Special Accommodations Deadline: Register between May 21, 2010 and June 1, 2010.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. e.d.t on June 21, 2010.

ADDRESSES: *Meeting Location:* The meeting will be held in the Sheraton Baltimore City Center Hotel, 101 West Fayette Street, Baltimore, MD 21201.

Registration and Special Accommodations: Register and request special accommodations at *http://cmsconference.hcmsllc.com.*

Submitting Comments: In commenting, please refer to file code CMS–4151–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this notice to *http://www.regulations.gov.* Follow the instructions "For submitting a comment."

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4151–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–4151–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Craig Miner, for questions regarding the model agreement, (410) 786–7937. Sonia Eaddy, for questions regarding the meeting registration, 410–786–5459.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

Section 101 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) which was enacted on December 8, 2003 established the Voluntary Prescription Drug Benefit Program (hereinafter referred to as "Part D"). The Part D program is available for individuals who are entitled to Medicare Part A or enrolled in Medicare Part B. The Centers for Medicare & Medicaid Services (CMS) contracts with private companies, referred to as Part D sponsors, to administer the Part D program via stand alone prescription drug plans (PDPs) and prescription drug plans offered by Medicare Advantage Organizations (MA–PDs). The Part D program became effective January 1, 2006.

Standard Part D prescription drug coverage consists of coverage subject to an annual deductible, 25 percent coinsurance (or an actuarially equivalent cost-sharing design) up to the initial coverage limit (ICL), and catastrophic coverage for individuals that exceed the annual maximum true out-of-pocket (TrOOP) threshold with cost-sharing equal to the greater of a $2/$5 copayment or coinsurance of 5

percent. Under the standard coverage, individuals that do not receive additional cost-sharing subsidies from CMS or additional coverage by other secondary payers (for example, State Pharmaceutical Assistance Programs) are responsible for paying 100 percent of the Part D negotiated price for covered Part D claims above the ICL until their TrOOP costs exceed the annual threshold amount.

Section 3301 of the Patient Protection and Affordable Care Act (Pub. L. 111–148), as amended by section 1101 of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (these public laws are collectively known as the Affordable Care Act), establishes the Medicare Coverage Gap Discount Program (Discount Program) by adding sections 1860D–43 and 1860D–14A of the Social Security Act (Act). Effective January 1, 2011, the Discount Program will make manufacturer discounts available to applicable Medicare beneficiaries receiving applicable covered Part D drugs while in the coverage gap. In general, the discount on each applicable covered Part D drug is 50 percent of an amount equal to the negotiated price (as defined in section 1860D–14A(g)(6) of the Act).

Beginning January 1, 2011, an applicable Part D drug will only be covered under Part D if the manufacturer has a signed agreement with the Secretary to participate in the Discount Program, provides applicable discounts on coverage gap claims for all of its applicable drugs, and remains in compliance with the terms of that agreement. The requirement to sign an agreement applies to manufacturers of applicable Part D drugs. However, the Secretary reserves the right to require all manufacturers to sign the agreement in the future if we discover that access to applicable Part D drugs is restricted. We also encourage manufacturers of non-applicable drugs to enter into an agreement if they intend to manufacture applicable Part D drugs in the future.

While section 1860D–43(c) of the Act permits us to allow coverage of drugs not covered under an agreement if we determine that availability of the drug is essential to the health of beneficiaries or, for 2011 only, that there are extenuating circumstances, we do not intend to apply this authority as we fully expect all manufacturers of applicable drugs to sign the agreement so that there will be no changes in the availability of coverage for Part D drugs. We will notify the public as early as possible if certain manufacturers have failed to sign an agreement.

II. Provisions of the Notice

A. Draft of the Model Manufacturer Agreement

Pursuant to section 1860D–14A(d)(5) of the Act, the Secretary is authorized to implement the Discount Program "by program instruction or otherwise." Accordingly, in the Addendum to this notice with comment period, we provide a draft of the model manufacturer agreement for use in the program that a manufacturer must enter into with the Secretary agreeing to provide the applicable discount on coverage gap claims by applicable beneficiaries for all of its applicable drugs if it wants its drugs to be covered under Part D. We intend to use the model manufacturer agreement as a standard agreement that will not be subject to further revision based on negotiations with individual manufacturers. The model manufacturer agreement will be finalized and posted on the CMS Web site after we have considered the public comments and consulted with manufacturers as required by section 1860D–14A(a) of the Act.

B. Meeting Regarding Draft Model Manufacturer Agreement

The following is the tentative agenda for the June 1, 2010 meeting:

9–9:30 Opening Remarks
9:30–10:30 CMS Overview of Administration of Discount Program—15 minutes
CMS Overview of PDE Records–45 minutes
10:30–11 Q&A Session
11–11:15 Break
11:15–11:45 CMS Review of Draft Manufacturer Agreement
11:45–12:15 Q&A Session
12:15–1:30 Lunch
1:30–2:30 Beneficiary Advocate Panel
2:30–3:30 Part D Plan Sponsor/PBM Panel
3:30–3:45 Break
3:45–5:15 Pharmaceutical Manufacturer Panel
5:15–5:30 Closing remarks.

III. Collection of Information Requirements

In accordance with section 1860D–14A(d)(6) of the Affordable Care Act, Chapter 35 of title 44, United States Code shall not apply to the program under this section. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

ADDENDUM—Draft Model Agreement

Medicare Coverage Gap Discount Program Agreement Between the Secretary of Health and Human Services (Hereinafter Referred to as "the Secretary") and the Manufacturer Identified in Section IX of This Agreement (Hereinafter Referred to as "the Manufacturer")

The Secretary, on behalf of the Department of Health and Human Services, and the Manufacturer, on its own behalf, for purposes of sections 1860D–14A and 1860D–43 of the Social Security Act (the Act), as set forth in the Patient Protection and Affordable Care Act of 2010, Public Law 111–148, and the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, collectively known as the Affordable Care Act, hereby agree to the following:

I. Definitions

The terms defined in this section will, for the purposes of this Agreement, have the meanings specified in sections 1860D–1 through 1860D–43 of the Act as interpreted and applied herein:

(a) "*Applicable Beneficiary*" means an individual who, on the date of dispensing a covered Part D drug:

1. Is enrolled in a prescription drug plan or an MA–PD plan;

2. Is NOT enrolled in a qualified retiree prescription drug plan;

3. Is NOT entitled to an income-related subsidy under 1860D–14(a) of the Act;

4. Has reached or exceeded the initial coverage limit under section 1860D–2(b)(3) of the Act during the year; and

5. Has NOT incurred costs for covered Part D drugs in the year equal to the annual out-of-pocket threshold specified in section 1860D–2(b)(4)(B) of the Act. This does not mean that an applicable beneficiary who has already moved through the coverage gap is not eligible for applicable discounts for applicable drugs dispensed while the applicable beneficiary was in the coverage gap.

(b) "*Applicable Drug*" means, with respect to an applicable beneficiary, a covered Part D drug—

1. Approved under a new drug application under section 505(b) of the Federal Food, Drug, and Cosmetic Act

(FDCA) or, in the case of a biological product, licensed under section 351 of the Public Health Service Act (PHSA) (other than a product licensed under subsection (k) of such section 351 of PHSA); and

2.i. If the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan uses a formulary, which is on the formulary of the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in;

ii. If the PDP sponsor of the prescription drug plan or the MA organization offering the MA–PD plan does not use a formulary, for which benefits are available under the prescription drug plan or MA–PD plan that the applicable beneficiary is enrolled in; or

iii. Is provided through an exception or appeal.

(c) "*Applicable Discount*" means 50 percent of the portion of the negotiated price (as defined in section I.(m) of this agreement), of the applicable drug of a Manufacturer that falls within the coverage gap (as defined in section I.(f) of this agreement).

(d) "*Centers for Medicare & Medicaid Services (CMS)*" means the agency of the Department of Health and Human Services having the delegated authority to operate the Medicare program.

(e) "*Contractor*" means the CMS contractor responsible for administering the requirements established by the Secretary to carry out section 1860D–14A of the Act.

(f) "*Coverage Gap*" means the gap phase in prescription drug coverage that occurs between the initial coverage limit (as defined in 1860D–2(b)(3) of the Act) and the out-of-pocket threshold (as defined in section 1860D–2(b)(4)(B) of the Act). For purposes of applying the initial coverage limit, Part D sponsors shall apply their plan-specific initial coverage limit under basic alternative actuarially equivalent or enhanced alternative Part D benefit designs.

(g) "*Covered Part D drug*" has the meaning as set forth in 42 CFR 423.100.

(h) "*Discount Program*" means the Medicare Coverage Gap Discount Program established under section 1860D–14A of the Act.

(i) "*Labeler Code*" means the first 5 digits in the 11-digit national drug code (NDC) format that is assigned by the FDA and identifies the Manufacturer.

(j) "*Manufacturer*" means any entity which is engaged in the production, preparation, propagation, compounding, conversion or processing of prescription drug products, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis. Such term does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law.

(k) "*Medicare Part D Discount Information*" means information sent from CMS, or its contractor, to the Manufacturer for the Manufacturer's applicable drugs received by applicable beneficiaries for Medicare Part D consisting of summary-level information showing the total units dispensed and total applicable discounts paid by Part D sponsors for each Manufacturer's NDC number during the applicable calendar quarter. This information will be derived from applicable data elements available on the prescription drug events (PDEs) as determined by CMS.

(l) "*National Drug Code (NDC)*" means the identifying prescription drug product number that is registered and listed with the Food and Drug Administration (FDA). For the purposes of this Agreement, the NDC refers to either the 9-digit (inclusive of 5 digit labeler code and 4 digit product code) or 11-digit (inclusive of 5 digit labeler code, 4 digit product code, and 2 digit package size code) NDC, as designated by the Secretary.

(m) "*Negotiated Price*" has the meaning given such term in 42 CFR 423.100 (as in effect on the date of enactment of section 1860D–14A of the Act), except that such negotiated price shall not include any dispensing fee for the applicable drug.

(n) "*Part D drug*" has the meaning given such term in 42 CFR 423.100.

(o) "*Part D Sponsor*" The term Part D sponsor has the meaning given such term in section 42 CFR 423.4.

(p) "*Prescription Drug Event (PDE)*" refers to a summary record that documents the final adjudication of a Part D dispensing event.

(q) "*Qualified Retiree Prescription Drug Plan*" The term qualified retiree prescription drug plan has the meaning given such term in section 1860D–22(a)(2) of the Act.

(r) "*Secretary*" means the Secretary of the United States Department of Health and Human Services, or any successor thereto, or any officer or employee of the Department of Health and Human Services or successor agency to whom the authority to implement this Agreement has been delegated.

II. Manufacturer's Responsibilities

In order for Part D coverage to be available for covered Part D drugs of a Manufacturer, the Manufacturer agrees to the following:

(a) To reimburse the applicable discount for all applicable discounts provided by Part D sponsors on behalf of the Manufacturer for all of the Manufacturer's applicable drugs based upon PDE information reported to CMS by Part D sponsors.

(b) To pay to each Part D sponsor within 14 days of being invoiced by the contractor the total quarterly applicable discounts provided by each Part D sponsor on behalf of the Manufacturer for all of the Manufacturer's applicable drugs provided during a previous specified quarter based upon PDE information utilized by CMS (or the contractor) to calculate the applicable discounts.

(c) To collect and have available appropriate data, including data related to Manufacturer's labeler codes, expiration date of NDCs, utilization and pricing information relied on by the Manufacturer to dispute the CMS contractor's discount calculations, and any other data the Secretary determines is necessary to carry out the discount program, for a period of not less than 10 years to ensure that it can demonstrate to the Secretary compliance with the requirements of the Discount Program.

(d) To comply with conditions in sections 1860D–14A and 1860D–43 of the Act, and any changes to the Medicare statute that affect the Discount Program.

(e) To comply with the requirements imposed by the Secretary for purposes of administering the Discount Program.

(f) To pay all applicable discounts provided by Part D sponsors on behalf of the Manufacturer for all of the Manufacturer's applicable drugs for applicable dates of service except for those dates of service after the marketing end date, which is the last lot expiration date, specified in a product's structured product labeling electronically submitted to the FDA if such marketing end date was submitted to the FDA prior to such date.

(g) To submit to periodic audits of data and documentation referenced in section II.(c) of this agreement.

(h) To comply with the payment amount dispute resolution process in section V. of this agreement.

(i) To comply with all applicable confidentiality requirements of the Health Insurance Portability and Accountability Act and 45 CFR parts 160, 162, and 164.

(j) To electronically list and maintain an up-to-date electronic FDA registration and listing of all NDCs so that CMS and Part D sponsors can accurately identify applicable drugs (as defined in section I.(b) of this agreement).

(k) To enter into and have in effect, under terms and conditions specified by the Secretary, a contract with a third party that the Secretary has entered into a contract with under section 1860D–14A(d)(3) of the Act.

(l) To provide to CMS or its contractor, electronic connectivity to receive "Medicare Part D Discount Information" reports.

(m) To make quarterly payments directly to accounts established by Part D sponsors via electronic funds transfer within the time period specified in subsection (b) of this section and within 1 business day of the transfer to provide CMS with electronic documentation in a manner specified by CMS that details the successful transmission of such payments.

III. Secretary's Responsibilities

(a) The Secretary shall require Part D sponsors to make applicable discounts available at the pharmacy, by mail order service, or at any other point of sale for applicable drugs beginning January 1, 2011.

(b) The Secretary is responsible for monitoring compliance by the Manufacturer with the terms of this Agreement.

(c) The Secretary is responsible for collecting PDE information from Part D sponsors for monitoring and tracking the applicable discounts provided by Part D sponsors on behalf of Manufacturers for applicable drugs and implementing internal control measures designed to ensure the accuracy and appropriateness of discount payments provided by Part D sponsors.

(d) The Secretary may audit the Manufacturer periodically with respect to the Manufacturer's labeler codes, expiration date of NDCs, and utilization and pricing information relied on by the Manufacturer to dispute the CMS contractor's discount calculations, and any other data the Secretary determines is necessary to carry out the Discount program.

(e) The Secretary shall contract with one or more third parties (the contractor) to:

1. Receive and transmit information, including Medicare Part D Discount Information (as defined in section I.(k) of this Agreement), between the Secretary, manufacturers, and other individuals or entities the Secretary determines appropriate;

2. Receive, distribute, or facilitate the distribution of funds of manufacturers to appropriate individuals or entities in order to meet the obligations of manufacturers under this agreement;

3. Provide adequate and timely information to manufacturers as necessary for the manufacturer to fulfill its obligations under this Agreement;

4. Permit manufacturers to conduct periodic audits, directly or through contracts, of the data and information used by the contractor to determine discounts for applicable drugs of the manufacturer under the Discount Program.

(f) The Secretary shall not disclose any identifying beneficiary information in these reports or otherwise under this Discount Program except as may be required by a court with competent jurisdiction.

(g) The Secretary shall be the sole source of information regarding beneficiary eligibility to receive the applicable discount and the Secretary's determination regarding beneficiary eligibility is not subject to audit or dispute by Manufacturer.

(h) The Secretary shall make public a list of Manufacturer's labeler codes that are subject to an existing Discount Program Agreement.

IV. Penalty Provisions

(a) The Secretary may impose a civil monetary penalty on a Manufacturer that fails to pay applicable discounts under the Program. The amount for each such failure is the amount the Secretary determines is commensurate with the sum of the amount that the Manufacturer would have paid with respect to such discounts under the Agreement, which will then be used to pay the applicable discounts which the Manufacturer had failed to provide, plus an additional 25 percent of the amount the Manufacturer would have paid with respect to such discounts under the agreement.

(b) The provisions of section 1128A of the Act (other than subsections (a) and (b)) shall apply to a civil money penalty in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a) of the Act.

V. Payment Amount Dispute Resolution

(a) In the event that a Manufacturer disputes the Medicare Part D Discount Information provided by CMS on the periodic summary, the Manufacturer shall provide written notice of the disputed information, by NDC number, to CMS and its contractor within 60 days of receipt of the information. The disputed information must be material, specific and related to the dispute at issue, and supported by evidence provided to the Secretary that establishes the basis of such dispute.

(b) The Manufacturer shall not withhold any invoiced discount payments pending dispute resolution.

(c) The Manufacturer and contractor will use their best efforts to resolve the dispute within 60 days of receipt of such notification. If the dispute is not resolved within 60 days, CMS will provide for an independent review and determination by an entity specified by CMS within 120 days of receipt of notification. If the Manufacturer disagrees with the determination, the Manufacturer may request review by the CMS Administrator. The decision by the CMS Administrator is final and binding.

(d) Adjustments to future applicable discount payments shall be made if new information demonstrates that either there have been material changes in Medicare Part D Discount Information or the negotiated prices originally used to compute previous applicable discount payments.

VI. Confidentiality Provisions

(a) Information disclosed by the manufacturer and deemed by the manufacturer and the Secretary to be confidential in connection with this Agreement is confidential and will not be disclosed by the Secretary in a form which reveals the manufacturer, except as necessary to carry out provisions of section 1860D–14A of the Act and for purposes authorized in section 1860D–15(f)(2) of the Act.

(b) Information disclosed to Manufacturers pursuant to this agreement shall only be used for purposes of paying the discount under the Discount Program. CMS or the contractor will only disclose to manufacturers the minimum data necessary for manufacturers to fulfill their obligations under this Agreement.

(c) Except where otherwise specified in the Act or Agreement, the Manufacturer will observe applicable State confidentiality statutes, regulations and other applicable confidentiality requirements.

(d) Notwithstanding the nonrenewal or termination of this Agreement for any reason, the confidentiality provisions of this Agreement will remain in full force and effect with respect to information disclosed under this Agreement prior to such nonrenewal or termination.

VII. Nonrenewal and Termination

(a) Unless otherwise terminated by either party pursuant to the terms of this Agreement, the Agreement shall be effective for an initial period of not less than 24 months beginning on January 1, 2011 and shall be automatically renewed for a period of 1 year unless terminated under section VII.(b) or (c) of this Agreement.

(b) The Secretary may terminate this Agreement for a knowing and willful

violation of the requirements of the Agreement or other good cause shown. The termination shall not be effective earlier than 30 days after the date of notice to the Manufacturer of such termination.

(c) The Secretary shall provide, upon request, a Manufacturer a hearing with a hearing officer concerning such termination if requested in writing within 15 days of receiving notice of the termination, and such hearing shall take place prior to the effective date of the termination with sufficient time for such effective date to be repealed if the Secretary determines appropriate. If the Manufacturer receives an unfavorable decision from the hearing officer, the Manufacturer may request review by the CMS Administrator. The decision of the CMS Administrator is final and binding.

(d) The Manufacturer may terminate this Agreement for any reason. Any such termination shall be effective as of the day after the end of the plan year if the termination occurs before January 30 of a plan year or as of the day after the end of the succeeding plan year if the termination occurs on or after January 30 of a plan year.

(e) Any termination shall not affect applicable discounts for applicable drugs of the Manufacturer that were incurred under the Agreement before the effective date of its termination.

(f) Manufacturer reinstatement will be available only upon payment of any and all outstanding applicable discounts incurred during any previous period of the Agreement. The timing of any such reinstatements will be consistent with the requirements for entering into an Agreement under section 1860D–14A(b)(1)(C) of the Act.

VIII. General Provisions

(a) Any notice required to be given pursuant to the terms and provisions of this Agreement will be sent in writing.

1. Notice to the Secretary will be sent to: Center for Medicare, Division of Pharmaceutical Manufacturer Management, Mailstop C1–26–16, 7500 Security Boulevard, Baltimore, MD 21244–1850.

2. The CMS address may be updated upon written notice to the Manufacturer.

3. Notices to the Manufacturer will be sent to the address as provided with this Agreement and updated upon Manufacturer notification to CMS at the address in this Agreement.

(b) In the event of a transfer in ownership of the Manufacturer or product, this Agreement is automatically assigned to the new owner, and all terms and conditions of this Agreement remain in effect.

(c) Nothing in this Agreement will be construed to require or authorize the commission of any act contrary to law. If any provision of this Agreement is found to be invalid by a court of law with competent jurisdiction, this Agreement will be construed in all respects as if any invalid or unenforceable provision were eliminated, and without any effect on any other provision.

(d) Nothing in this Agreement shall be construed as a waiver or relinquishment of any legal rights of the Manufacturer or the Secretary under the Constitution, the Act, other Federal laws, or State laws.

(e) This Agreement shall be construed in accordance with Federal law and ambiguities shall be interpreted in the manner which best effectuates the statutory scheme.

(f) The terms "Medicare" and "Manufacturer" incorporate any contractors which fulfill responsibilities pursuant to the Agreement unless specifically provided for in this Agreement or specifically agreed to by an appropriate CMS official in accordance with paragraph (g) of this section.

(g) Except for the conditions specified in section VIII.(a) of this Agreement, this Agreement once finalized, will not be altered by the parties.

(h) Nothing in this Agreement shall be construed as requiring coverage under Part D of a Manufacturer's product if that product does not otherwise meet the definition of a covered Part D drug under 42 CFR 423.100.

IX. Signatures

FOR THE SECRETARY OF HEALTH AND HUMAN SERVICES

By: _____

(please print name)

_____

(signature)

Title: _____

Date: _____

ACCEPTED FOR THE MANUFACTURER

I certify that I have made no alterations, amendments or other changes to this Coverage Gap Discount Program Agreement.

By: _____

(please print name)

_____

(signature)

Title: _____

Name of Manufacturer: _____

Manufacturer's Mailing Address: _____

Manufacturer's E-mail Address: _____

Manufacturer labeler Code(s): _____

Date: _____

Authority: Section 3301 of the Patient Protection Affordable Care Act and section 1101 of the Health Care and Education Reconciliation Act of 2010 (Sections 1860D–43 and 1860D–14A of the Social Security Act) Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: May 13, 2010.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 20, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–12559 Filed 5–21–10; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

The 13th Annual Food and Drug Administration-Orange County Regulatory Affairs Educational Conference in Irvine, California: "Regulatory Affairs: The Business of Regulatory Affairs"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of conference.

The Food and Drug Administration (FDA) is announcing the following conference: 13th Annual Educational Conference co-sponsored with the Orange County Regulatory Affairs Discussion Group (OCRA). The conference is intended to provide the drug, device, biologics and dietary supplement industries with an opportunity to interact with FDA reviewers and compliance officers from the centers and District Offices, as well as other industry experts. The main focus of this interactive conference will be product approval, compliance, and risk management in the four medical product areas. Industry speakers, interactive Q & A, and workshop sessions will also be included to assure open exchange and dialogue on the relevant regulatory issues.

Date and Time: The conference will be held on June 16 and 17, 2010, from 7:30 a.m. to 5 p.m.

Location: The conference will be held at the Irvine Marriott, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Linda Hartley, Food and Drug Administration, 19701 Fairchild, Irvine, CA 92612, Voice: 949–608–4413, FAX: 949–608–4417; or Orange County Regulatory Affairs Discussion Group

(OCRA), Attention to Detail, 5319 University Dr., suite 641, Irvine, CA 92612, Voice: 949–387–9046, FAX: 949–387–9047, Web site: *www.ocra-dg.org*.

Registration and Meeting Information: See OCRA's Web site at *www.ocra-dg.org*. Contact Attention to Detail at 949–387–9046.

Registrations fees are as follows: $725.00 for members, $775.00 for non-members, and $475.00 for FDA/Government/Students. OCRA student rate applies to those individuals enrolled in a regulatory or quality related academic program at an accredited institution. Proof of enrollment is required.

The registration fee will cover actual expenses including refreshments, lunch, materials, parking, and speaker expenses.

If you need special accommodations due to a disability, please contact Linda Hartley (see *Contact*) at least 10 days in advance.

Dated: May 20, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12615 Filed 5–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0237]

Identifying Unmet Public Health Needs and Facilitating Innovation in Medical Device Development; Notice of Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Identifying Unmet Public Health Needs and Facilitating Innovation in Medical Device Development." The purpose of the workshop is to obtain public input on what are the most important unmet public health needs and what are the barriers to the development of medical devices that can cure, significantly improve, or prevent these illnesses and injuries.

Dates and Times: This workshop will be held on June 24, 2010, from 8 a.m. to 5 p.m. Persons interested in attending the meeting must register by 5 p.m. on June 10, 2010. Submit electronic or written comments by July 23, 2010.

Location: The public workshop will be held at Hilton Washington DC/North Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877.

Contact Person: Melanie Fleming, Office of the Center Director, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5407, Silver Spring, MD 20993, 301–796–5424, FAX: 301–847–8510, *melanie.fleming@fda.hhs.gov*.

Registration and Requests for Oral Presentations: Interested persons may register at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list). Registrants must provide the following information: (1) name, (2) title, (3) company or organization (if applicable), (4) mailing address, (5) telephone number, and (6) e-mail address. There is no registration fee for the public workshop. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be provided on a space available basis beginning at 7:30 a.m.

If you wish to make an oral presentation during any of the open comment sessions at the meeting (see section II of this document), you must indicate this at the time of registration. FDA requests that presentations focus on the areas defined in section III of this document. You should also identify which discussion topic you wish to address in your presentation and you must submit a brief statement that describes your experience and/or expertise relevant to your proposed presentation. In order to keep each open session focused on the discussion topic at hand, each oral presentation should address only one discussion topic. FDA will do its best to accommodate requests to speak.

If you need special accommodations due to a disability, please contact Melanie Fleming (see *Contact Person*) at least 7 days in advance.

Comments: FDA is holding this public workshop to obtain information on a number of specific questions regarding unmet public health needs and steps the Federal Government can take to reduce barriers to the development of medical devices that can cure, significantly improve, or prevent these illnesses and injuries. The deadline for submitting comments regarding this public workshop is July 23, 2010.

Regardless of attendance at the public workshop, interested persons may submit electronic comments to *http://www.regulations.gov*, or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section III of this document, please identify the question you are addressing. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's Center for Devices and Radiological Health (CDRH) has undertaken an initiative to proactively facilitate medical device innovation to address unmet public health needs defined as illnesses and injuries that meet the following criteria: (1) Are serious or have moderate adverse impact on health, but affect many individuals; (2) could be cured, significantly improved, or prevented by the development or redesign of a device; and (3) the device(s) is not being developed or redesigned due to barriers that the Federal Government can directly or indirectly remove or minimize, where those barriers are out of proportion to what is warranted based on the public health needs.

Medical device development and/or redesign is responsible for significant public health benefits, including the prevention, treatment, diagnosis, and monitoring of serious or life-threatening diseases and improved quality of life. However, unnecessary barriers to market may exist either due to market failures or regulatory inefficiencies. For example, payment practices can affect financial incentives for manufacturers to develop a new or improved technology. A predictable and consistent regulatory pathway can encourage would-be innovators to invest in the development of an innovative device.

As part of this initiative, CDRH established a Council on Medical Device Innovation composed of participants from federal agencies. Agencies represented include the National Institutes of Health, the Centers for Disease Control and Prevention, the Centers for Medicare and Medicaid Services, the Agency for Healthcare Research and Quality, the Department of Defense, the Defense Advanced Research Projects Agency, and the Department of Veterans Affairs. The purpose of the Council is to identify the most important unmet public health needs, the barriers to innovative medical device development or redesign that could address those needs, and actions the Federal Government can

take to reduce those barriers while assuring the safety, effectiveness, and quality of medical devices marketed in the United States.

The Council seeks input from a wide range of constituencies to include but not be limited to industry, academia, patient/consumer advocacy groups, professional organizations, and other State and Federal bodies under aligned public health missions, to address the issues outlined in this document.

During the public workshop, there will be an open dialogue between Federal Government Council members and experts from the private and public sectors regarding the topics described in this document. Workshop participants will not be expected to develop consensus recommendations, but rather to provide their perspectives on priority areas in which medical device innovations can have the highest positive impact on public health. Participants will also be encouraged to comment on devices not being developed or redesigned due to barriers that the Federal Government can and should directly or indirectly remove or minimize.

Additional information on the public workshop, including an agenda, will be made available in advance of June 24, 2010, at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

II. Public Participation

If you wish to make an oral presentation during the public workshop, you must indicate this at the time of registration. There are two types of opportunities for participation planned for the public workshop. In one, formal presentations will address one of the two topics (see section III of this document) that will be limited to 15 minutes and require submission of the presentation in advance of the meeting. The other will be time-limited, based on the number of requests, as part of the public comment period. When registering, you will be required to identify the title of the topic you wish to address in your presentation and answer all the related questions on the web registration form. FDA will do its best to accommodate requests to present and will focus discussions to the topics described in this document (see section III of this document). Individuals and organizations with common interests are urged to consolidate or coordinate their presentations, and to request time for joint presentations. FDA will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is to begin.

III. Issues for Discussion

The workshop will focus on three topics: (1) Identification of the most important unmet public health needs; (2) delineation of the barriers to the development, redesign, and patient and healthcare professional access to medical devices that can cure, significantly improve, or prevent these illnesses or injuries; and (3) identification of the actions the Federal Government can take to remove or minimize these barriers. The discussion of these general topics should not be limited by current statutes or regulations and will include, but not be limited to, discussion of the following questions:

1. Identifying areas of public health need:

a. Which unmet public health needs could be most effectively addressed by the development of new, or the redesign of existing, medical devices?

b. How should the Council set priorities amongst the identified public health needs? Are there specific factors that should be considered? If so, which and why?

2. Addressing barriers to development and/or redesign of medical devices:

a. What are the significant barriers facing innovators, academics, and/or industry that limit the availability and clinical use of medical devices that have the potential to improve public health?

b. How should any perceived or actual barriers be evaluated to determine whether federal intervention is appropriate?

c. How should federal agencies—including those present and others not represented—address those barriers that are out of proportion to what is warranted based on the public health needs?

IV. Transcripts

Please be advised that as soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857. A transcript of the public workshop will be available on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm* (select the appropriate meeting from the list).

Dated: May 20, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–12588 Filed 5–25–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Surveillance, Natural History, Quality of Care and Outcomes of Diabetes Mellitus with Onset in Childhood and Adolescence, RFA DP 10–001, Initial Review

Correction: This notice was published in the **Federal Register** on March 22, 2010, volume 75, Number 54, Page 13560. The Place and time should read as follows:

Time and Date: 8:30 a.m.–6 p.m., June 15, 2010 (Closed).

Place: W Hotel, 3377 Peachtree Road, NE., Atlanta, GA 30326, Telephone: 678–500–3100.

Contact Person for More Information: Donald Blackman, Ph.D., Scientific Review Officer, National Center for Chronic Disease Prevention and Health Promotion, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop K–92, Atlanta, GA 30341, Telephone: (770) 488–3023, E-mail: *DBY7@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 20, 2010.

Andre Tyler,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2010–12627 Filed 5–25–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0004] [FDA 225–09–0012]

Memorandum of Understanding Between the Food and Drug Administration and Drugs.Com

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and Drugs.Com. The purpose of the MOU is to extend the reach of FDA Consumer Health Information and to provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.

DATES: The agreement became effective May 26, 2010.

FOR FURTHER INFORMATION CONTACT: Jason Brodsky, Consumer Health Information Staff, Office of External Relations, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5378, Silver Spring, MD 20993–0002, 301–796–8234, e-mail: *Jason.Brodsky@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 17, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

MOU Number: 225-09-0012

MEMORANDUM OF UNDERSTANDING
between
THE FOOD AND DRUG ADMINISTRATION
and
DRUGS.COM

I. PURPOSE AND GOALS

This Memorandum of Understanding ("MOU") establishes a cooperative public education program between two entities (individually a Party -- collectively the Parties): The Food and Drug Administration (FDA), Office of External Relations (OER), Consumer Health Information Staff and Drugs.com.

The purpose of the cooperative program is to:

- extend the reach of FDA Consumer Health Information; and
- provide consumers with better information and timely content concerning public health and safety topics, including alerts of emerging safety issues and product recalls.

II. AUTHORITY

This MOU is authorized pursuant to section 903 of the Food, Drug and Cosmetic Act (21 USC 393(d)(2)).

III. BACKGROUND

The Parties have entered into this Agreement in mutual recognition of the need to empower consumers with health information they can apply in everyday life.

The FDA Web site currently receives approximately 6 million visitors per month, most of which are representatives of regulated industry. Within the agency's site, FDA Consumer Health Information receives approximately 250,000 page views per month. Drugs.com is visited by 11 million individuals each month proactively seeking information on medications. Drugs.com's mission is to empower patients with the knowledge to better manage their own healthcare and to improve safety by assisting in the reduction of medication errors.

This MOU meets the requirements set forth in FDA's policy statement on co-branding of FDA Consumer Health Information, which is available online at http://www.fda.gov/ForConsumers/ucm126390.htm.

FDA and Drugs.com recognize that this partnership agreement is not intended, and may not be relied on, to create any right or benefit, substantive or procedural, enforceable by law by any party against the United States or against Drugs.com.

IV. PROGRAM COMPONENTS AND ACTIVITIES

The components and activities of the Program are expected to increase FDA's capacity to disseminate time-sensitive public health information. The cooperative public education program will include the following components:

- An FDA/Drugs.com joint online resource on the Drugs.com site (the "Program"), which will feature editorial and visual FDA Consumer Health Information such as videos and photo slideshows. The parties will mutually agree to the type and exact items of content made available through the Program and on other parts of Drugs.com As a general matter, the Program

will feature a minimum of 50 articles of FDA content and provide users with access to the agency's full catalog of Consumer Updates. Drugs.com will promote the Program throughout their site and within interactive tools.

- Integration of FDA Consumer Health Information with Drugs.com's mobile phone platform, which currently receives approximately 140,000 visitors per month.

V. TERMS OF THE MOU

1. FDA Consumer Health Information must be easily distinguishable from non-FDA content within the Program. Placement of FDA Consumer Health Information within the Program should be clearly identified as such. Examples of clearly identifying FDA Consumer Health Information would be placing this information in a box and/or using a distinct color to distinguish it from non-FDA content, and/or otherwise clearly distinguishing the non-FDA content via an adequate disclaimer statement.

2. Printed and online Web pages containing FDA Consumer Health Information must be free of advertisements to avoid implying FDA's endorsement or support for a particular product, service or Web site.

3. This MOU does not grant exclusivity to either party. Neither party is restricted from participating in similar initiatives with other public or private agencies, organizations or individuals.

4. All activities within the scope of this Agreement must comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended by the Workforce Investment Act of 1998 (P.L. 105-220), August 7, 1998 (see HHS policy on Section 508 compliance at http://www.hhs.gov/od/508policy/index.html); and Office of Management and Budget (OMB) policies for protecting private information (see www.usa.gov/webcontent/reqs_bestpractices/laws_regs/privacy.shtml).

5. FDA and Drugs.com will cooperate in maintenance of each party's trademarks and logos. The FDA will not permit use of its logo for marketing purposes other than to promote the Program. The use of FDA names or logos shall not imply any exclusive arrangement. Any use of FDA logos must be approved, in advance, by FDA's Consumer Health Information Staff.

6. Both parties agree that information FDA provides to Drugs.com shall be public domain material. FDA shall have full rights to reuse the content for all FDA purposes, and the right to share with other collaborators or requestors.

7. Drugs.com agrees to maintain current FDA Consumer Health Information within the Site and Program. FDA Consumer Health Information must be removed from the Program in the following circumstances: (1) within 3 years of the date of its first publication; (2) upon termination of this Agreement, if the partnership Agreement terminates less than 3 years after the material is posted; (3) upon FDA's request in circumstances in which the information becomes outdated; or (4) as soon as commercially practicable but no longer than 72 hours after receipt of a written request from FDA to remove the material, regardless of reason. Drugs.com's failure to display current FDA Consumer Health Information may result in the termination of this Agreement.

8. This Agreement does not and is not intended to transfer to either party any rights in any technology or intellectual property.

V. LINKS

FDA and Drugs.Com will provide inbound and outbound links to and from the Program and the FDA's Consumer Health Information Web page.

FDA will not provide Drugs.com access to any document or information to the extent that providing such access would place the FDA in breach of the Trade Secrets Act, codified at 18 U.S.C. sec. 1905; the Privacy Act, codified at 5 U.S.C. sec. 552a; the Food, Drug, and Cosmetic Act, codified at 21 U.S.C. sec. 301, et seq (particularly 21 U.S.C. sec. 331(j)); FDA regulations (21 Code of Federal Regulations (CFR)); or any other Federal law or regulation.

VI. LIAISON OFFICERS

Jason Brodsky
Director, Consumer Health Information Staff
Office of External Relations
U.S. Food and Drug Administration
5600 Fishers Lane, Room 15A-29
Rockville, Maryland 20857
PHONE: 301-827-6251
E-mail: Jason.Brodsky@fda.hhs.gov

Philip Thonton
Chief Executive Officer
Drugs.com
P. O. Box 302-739
North Harbour
Auckland 0751
New Zealand
PHONE: (+64) 9-476-8500
E-mail: Philip.Thornton@drugs.com

Each Party shall appoint a representative who shall act as the liaisons between such party and the other party's representative. A party may update its representative upon written notice to the other party.

VII. LENGTH OF THE AGREEMENT AND ASSESSMENT MECHANISMS

This MOU will be effective for three years from the date of signature by the later Party to sign it. At the end of each year, and annually thereafter, as long as the Agreement remains in force, the Parties will evaluate the effectiveness of the Agreement in meeting their goals and may amend the Agreement, continue it as written, or dissolve the Agreement by mutual consent. In addition, at any time, the Parties may modify or terminate the Agreement by mutual written consent, and either Party may terminate the Agreement at any time by means of a written notice of termination.

At least every two months, Drugs.com will provide gratuitously, and with no expectation of reimbursement, statistical information to FDA concerning the reach of the cooperative educational program. This information will include metrics on the number of users visiting the joint online resource and individual content items contained therein, as well information concerning the reach of the content integrated with Drugs.com's mobile platform. The Parties agree that Drugs.com will provide information regarding usage to the FDA. This information will be jointly reviewed. The purpose of reviewing this

information will be to evaluate the effectiveness of the collaboration and to make any necessary adjustments in approach, which may include termination of the partnership.

VIII. NO COMMITMENT OF FUNDS

Nothing in this MOU shall be construed to obligate either party to make payments to the other.

IX. LIMITATIONS ON LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER UNDER ANY THEORY OF LIABILITY, HOWEVER ARISING, FOR ANY COSTS OF COVER OR FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT.

The provisions of this Section IX shall survive termination, cancellation or expiration of this MOU or any reason whatsoever.

X. SIGNATURES OF RESPONSIBLE PARTIES

By signing this agreement, the responsible parties agree to the terms and conditions of this MOU, and they further agree to adhere to FDA's policy statement on co-branding of FDA Consumer Health Information.

DRUGS.COM

BY: _____ 10/13/09

Signature of authorized representative — Date

PHILIP THORNTON
Chief Executive Officer
Drugs.com

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 9/29/09

Signature of authorized representative — Date

JOSHUA M. SHARFSTEIN, M.D.
Principal Deputy Commissioner of Food and Drugs
Department of Health and Human Services

[FR Doc. 2010–12638 Filed 5–25–10; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0013, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 11, 2010. 75 FR 11552. The collection involves surveying travelers to measure customer satisfaction of aviation security in an effort to more efficiently manage airport performance.

DATES: Send your comments by June 25, 2010. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—*

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0013; Aviation Security Customer Satisfaction Performance Measurement Passenger Survey. TSA, with OMB's approval, has conducted surveys of passengers and now seeks approval to continue this effort. TSA plans to conduct passenger surveys at airports nationwide. The surveys will be administered using an intercept methodology. The intercept methodology uses TSA personnel who are not in uniform to hand deliver paper business card style forms that contain a url address to an online survey to passengers immediately following the passenger's experience with the TSA's checkpoint security functions. Passengers are invited, though not required, to view and complete the survey via an online portal. *The intercept methodology randomly selects times and checkpoints to select passengers to complete the survey in an effort to gain survey data representative of all passenger demographics-including passengers who—*

- Travel on weekdays or weekends;
- Those who travel in the morning, mid-day, or evening;
- Those who pass through each of the different security screening locations in the airport;
- Those who are subject to more intensive screening of their baggage or person; and
- Those who experience different volume conditions and wait times as they proceed through the security checkpoints.

The survey includes ten to fifteen questions. Each question promotes a quality response so that TSA can identify areas in need of improvement. All questions concern aspects of the passenger's security screening experience.

TSA intends to collect this information in order to continue to assess customer satisfaction in an effort to more efficiently manage airport performance. In its future surveys, the TSA wishes to obtain more detailed, airport-specific data that the TSA can use to enhance customer experiences and airport performances. In order to gain more detailed information regarding customer experiences, the TSA is submitting eighty-one questions to OMB for approval. Twenty-eight of the questions have been previously approved by OMB and fifty-three questions are being submitted to the OMB for first-time approval. *Each survey question seeks to gain information regarding one of the following categories:*

- Confidence in Personnel.
- Confidence in Screening Equipment.
- Confidence in Security Procedures.
- Convenience of Divesting.
- Experience at Checkpoint.
- Satisfaction with Wait Time.
- Separation from Belongings.
- Separation from Others in Party.
- Stress Level.

Once a time and checkpoint is randomly selected, TSA personnel distribute forms to passengers until the TSA obtains the desired sample size. The samples can be selected with one randomly selected time and location or span multiple times and locations. Each airport uses a business card that directs customers to an online portal. All responses are voluntary and there is no burden on passengers who choose not to respond.

All airports have the capability to conduct this survey. Based on prior survey data and research, a sample size of 384 needs approximately 1,000 surveys. TSA assumes that there will be 384 respondents from 1,000 surveys distributed. At an inidividual airport, we assume the burden on passengers who choose to respond to be approximately five-minutes per respondent. Therefore, 384 respondents x 1 airport = 384 respondents a year. It takes approximately 5 minutes for each respondent to complete the survey so the total burden at one airport is 384 respondents x 5 minutes = 1,920 minutes or 32 hours per airport. We estimate that 25 airports will conduct the survey each year. Therefore, 384 respondents x 25 airports = 9,600 respondents a year. Since we assume it takes approximately 5 minutes for each

respondent to complete the survey the total burden is 9,600 respondents x 5 minutes = 48,000 minutes, or 800 hours per year.

Title: Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0013.

Forms(s): Aviation Security Customer Satisfaction Performance Measurement Passenger Survey.

Affected Public: Airline Travelers.

Abstract: This airport survey represents an important part of TSA's efforts to collect data on customer satisfaction with TSA's aviation security procedures.

Number of Respondents: 9,600.

Estimated Annual Burden Hours: An estimated 800 hours annually.

Issued in Arlington, Virginia, on May 20, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–12603 Filed 5–25–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Aircraft Operator Security

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), OMB control number 1652–0003, abstracted below to the Office of Management and Budget (OMB) for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on March 16, 2010. 75 FR 12559. The collection requires aircraft operators to adopt and implement a TSA-approved security program. These programs require aircraft operators to maintain and update records to ensure compliance with security provisions outlined in 49 CFR part 1544.

DATES: Send your comments by June 25, 2010. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Desk Officer, Department of Homeland Security/TSA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson, TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011; telephone (571) 227–3651; e-mail *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0003; Security Programs for Aircraft Operators, 49 CFR part 1544. TSA is seeking to renew its OMB control number, 1652–0003, Aircraft Operator Security. TSA uses the information collected to determine compliance with 49 CFR part 1544 and to ensure the freedom of movement for people and commerce by monitoring aircraft operator security procedures. TSA has implemented aircraft operator security standards at 49 CFR part 1544 to require all aircraft operators to which this part applies to adopt and implement a security program. These TSA-approved security programs establish procedures that aircraft operators must carry out to protect persons and property traveling on flights provided by the aircraft operator against acts of criminal violence, aircraft piracy, and the introduction of explosives, incendiaries, or weapons aboard an aircraft.

This information collection is mandatory for aircraft operators. As part of their security programs, affected aircraft operators are required to maintain and update, as necessary, records of compliance with the security program provisions set forth in 49 CFR part 1544, including compliance with applicable Security Directives. This regulation also requires affected aircraft operators to make their security programs and associated records available for inspection and copying by TSA to ensure transportation security and regulatory compliance.

The information TSA collects includes identifying information on aircraft operators' flight crews and passengers. The requirement encompasses vetting of the entire flight crew, other aircraft operator personnel, and all passengers. The passenger watch list checks currently conducted by aircraft operators will soon be taken over by TSA's Secure Flight program. Under this program, TSA will conduct the checks for the aircraft operators, which will reduce their burden as described in this ICR. (*See* OMB control number 1652–0046).

Aircraft operators are required to provide this information via electronic means. Aircraft operators with limited electronic systems may need to modify their current systems or generate a new computer system in order to submit the requested information but are not restricted to these means.

Part 1544 also requires aircraft operators to ensure that flight crew members and employees with unescorted access authority or who perform screening, checked baggage, or cargo functions submit to and receive a criminal history records check (CHRC). As part of the CHRC process, the individual must provide identifying information, including fingerprints. Additionally, aircraft operators must maintain these records and make them available to TSA for inspection and copying upon request.

Part 1544 also governs recordkeeping requirements for aircraft operators holding a full All-Cargo Standard Security Program; however, their hour burden has been separately reported under OMB control number 1652–0040.

Title: Aircraft Operator Security.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0003.

Forms(s): N/A.

Affected Public: Aircraft Operators.

Abstract: 49 CFR part 1544 requires aircraft operators to maintain, update, and comply with TSA-approved comprehensive security programs to ensure the freedom of movement for people and commerce by monitoring aircraft operator security procedures. These programs and related records are subject to TSA inspection.

Number of Respondents: 796.

Estimated Annual Burden Hours: An estimated 1,841,130 hours annually.

Issued in Arlington, Virginia on May 20, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–12609 Filed 5–25–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0262]

Certificate of Alternative Compliance for the Offshore Supply Vessel JANSON R. GRAHAM

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel JANSON R. GRAHAM as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on March 31, 2010.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2010–0262 in the "Keyword" box, and then clicking "Search."

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call LTJG Christine Dimitroff, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2176. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

A Certificate of Alternative Compliance, as allowed under Title 33, Code of Federal Regulation, Parts 81 and 89, has been issued for the offshore supply vessel JANSON R. GRAHAM, O.N. 1222117. Full compliance with 72 COLREGS and Inland Rules Act would hinder the vessel's ability to maneuver within close proximity of offshore platforms. The forward masthead light may be located on the top forward portion of the pilothouse 6.2 meters above the hull. Placing the forward masthead light at the height required by Annex I, paragraph 2(a) of the 72 COLREGS and Annex I, Section 84.03(a) of the Inland rules Act would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms. Additionally, the horizontal distance between the forward and aft masthead lights may be 2.489 meters. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS and Annex I, Section 84.03(a) of the Inland Rules Act. In addition the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS and Annex I, Section 84.05(a) of the Inland Rules Act.

Dated: 15 April 2010.

J. W. Johnson,

Commander, U.S. Coast Guard Chief, Inspections and Investigations Branch By Direction of the Commander Eighth Coast Guard District.

[FR Doc. 2010–12602 Filed 5–25–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0031]

Recovery Policy RP9526.1, Hazard Mitigation Funding Under Section 406 (Stafford Act)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability.

SUMMARY: This document provides notice of the final Recovery Policy RP9526.1, *Hazard Mitigation Funding Under Section 406 (Stafford Act),* which is being issued by the Federal Emergency Management Agency (FEMA).

DATES: This policy is effective March 30, 2010.

ADDRESSES: This final policy is available online at *http://www.regulations.gov* under docket ID FEMA–2010–0031 and on FEMA's Web site at *http://www.fema.gov.* You may also view a hard copy of the final policy at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Lu Juana Richardson, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, via e-mail at *LuJuana.Richardson@dhs.gov.*

SUPPLEMENTARY INFORMATION: This policy provides guidance on the appropriate use of hazard mitigation discretionary funding available under Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5172. This will ensure national consistency in the use of Section 406 mitigation funds and promote measures that reduce future loss to life and property, protect the Federal investment in public infrastructure and ultimately help build disaster-resistant communities.

FEMA has revised this policy to reflect the alignment of benefit cost analysis methodologies between the Mitigation and Recovery Directorates. In order to achieve consistency across program areas and to maximize FEMA's ability to support and encourage cost-effective hazard mitigation, the Public Assistance Division has adopted the Mitigation Directorate's Benefit Cost Analysis (BCA) methodology for Section 406 hazard mitigation projects. Previously, the only benefits considered in the BCA were damage to the facility

and its damaged contents, necessary emergency protective measures and temporary relocation assistance. Section VII.B.3. of the policy has been changed to also consider social net benefits (e.g., loss of function, casualty, and cost avoidance) in the BCA.

Authority: 42 U.S.C. 5121–5207; 44 CFR part 206.

David J. Kaufman,

Director, Office of Policy and Program Analysis, Federal Emergency Management Agency.

[FR Doc. 2010–12663 Filed 5–25–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–10]

Notice of Proposed Information Collection for Public Comment Public Housing Agency Plan Revisions To Implement Requirements for Certain Qualified Public Housing Agencies Under the Housing and Economic Recovery Act (HERA) 2008

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202–402–8048, (this is not a toll-free number) or email Mr. McKinney at *Leroy.McKinneyJr@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 5-Year and Annual Public Housing Agency (PHA) Plan OMB Control Number, if applicable: 2577–0226.

Description of the Need for the Information and Proposed Use: Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act, of the Housing and Economic Recovery Act (HERA) of 2008 amends section 5A(b) of the 1937 Act by establishing "qualified public housing agencies", a category of PHAs with less than 550 public housing units and tenant-based vouchers combined that are provided substantial paperwork relief, primarily with respect to the PHA Annual Plan requirements in section 5(A)(b) of the United States Housing Act of 1937. The paperwork relief exempts qualified PHAs from the requirement to prepare and submit an annual PHA plan to HUD for review. This Act impacts approximately sixty-eight percent, or 2,802 of the 4,114 PHAs that are required to submit Annual and 5-Year PHA Plans. This information collection revises previously OMB approved forms HUD–50077 and HUD–50075, and adds Civil Rights certification (form HUD–50077–CR) formerly appearing on form HUD–50077 as a separate document. The form HUD–50075 deletes category for "HCV only PHAs" and adds categories for "Qualified PHAs," "Non-Qualified PHAs" and "Troubled PHAs" in Section 1.0 containing PHA Information; adds a new section to describe activities for implementing the Violence Against Women Act (Section 5.3); incorporates a table identifying all Annual PHA Plan elements (Section 6.0); adds a new Section 6.1 for Admissions Policy for the Deconcentration of Lower-Income Families; adds a new requirement (Section 6.9(c)) under Additional Information for Troubled and Standard PHAs to include or reference any applicable memorandum of agreement with HUD or any plan to improve performance and any other information required by HUD; revises the list of Required Documents to add forms HUD–50077–CR, HUD–50077–SL, and Admissions Policy for Deconcentration of Lower-Income Families, lists separately the required PHA Plan attachments for Qualified and Non-Qualified PHAs (Section 7.0); minor edits to the Instructions page of form HUD–50075, including a new requirement under the component for Operation and Management to update PHA Plans where PHAs have opted to implement non-smoking policies in public housing; and renumbers other sections of the form. The currently proposed form HUD–50075 will be used by all PHAs—high performing, standard, troubled, non-qualified, and qualified, who will only complete the 5-Year Plan information, sections 5.0 through 5.3—the mission, goals and objectives of the PHA and the goals, objectives, policies, or programs for servicing victims of domestic violence, dating violence, sexual assault, or stalking and submit the template every 5 years. Qualified PHAs no longer submit information on discretionary programs (demolition or disposition, HOPE VI, Project-based vouchers, required or voluntary conversion, homeownership, or capital improvements, etc.) as part of an Annual PHA Plan submission. However, Qualified PHAs that intend to implement these activities are still subject to the full application and approval processes that exist for demolition or disposition, designated housing, conversion, homeownership, and other special application processes that will no longer be tied to prior authorization in an Annual PHA Plan for a Qualified PHA. All PHAs, including the PHAs identified as Qualified PHAs under HERA, must

continue to submit any demolition or disposition, public housing conversion, homeownership, or other special applications as applicable to HUD's Special Applications Center (SAC) in Chicago for review and approval or to HUD Headquarters for CFFP proposals. Information on special applications can be found at the SAC Web site: *http://www.hud.gov/offices/pih/centers/sac/about/overview.cfm.* The following Web site at: *http://www.hud.gov/offices/pih/programs/ph/capfund/index.cfm* contains information on the Capital Fund Financing Program (CFFP), and Operating Fund Financing Program (OFFP). *http://www.hud.gov/offices/pih/programs/ph/am/.* Qualified PHAs should, as a matter of good business practice, continue to keep their residents, the general public, and the local HUD office apprised of any plans to initiate these types of programs and activities. Revisions to form HUD–50077–CR deletes, "if there is no Board of Commissioner" from paragraph 1, line 2. Qualified-only PHAs will complete proposed form HUD–50077–CR. To more accurately reflect the application requirements of PHAs for the Capital Fund Program, form HUD–50077 deletes item 3, "The PHA certifies that there has been no change, significant or otherwise, to the Capital Fund Program (and Capital Fund Program/Replacement Housing Factor) Annual Statement(s), since submission of its last approved Annual Plan. The Capital Fund Program Annual Statement/Annual Statement/Performance and Evaluation Report must be submitted annually even if there is no change." and redesignates items (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), and (22), as (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), and (21), respectively. Non-Qualified only PHAs are required to complete form HUD–50077. The PHA plan is a web-based submission process (allowing PHAs to retrieve the applicable templates) that allows PHAs to provide their plans to HUD via the Internet. The system allows HUD to track plans with limited reporting and any changes from the previous submission.

Agency Form Numbers: HUD–50075; HUD–50075.1, HUD–50075.2, HUD–50077, HUD–50077–CR, HUD–50077–SL, HUD–50070.

Members of the Affected Public: Local, Regional and State Body Corporate Politic Public Housing Agencies (PHAs) Governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours needed to prepare the information collection is 111,005; estimated number of respondents is 4,114; the frequency of response for qualified PHAs is once every 5 years and when any interim changes in discretionary programs have been made and/or every year on a rolling 5-year basis. For example, PHAs Fiscal Year beginning (FYB) 2006, covers the PHA's fiscal years 2007–2011. The next Five-Year Plan would be due for the PHA's FYB 2011 and would cover fiscal years 2012–2016; the estimated time to prepare the response varies depending on the interim changes in discretionary programs; and, the average annual burden hours per PHA is 5.4 hours. Consequently, this information collection reduces the total administrative burden hours accordingly and associated costs to approximately 68% (2,802 PHAs) of the total PHA inventory (4,114 PHAs).

Status of the Proposed Information Collection: This is a revision of currently approved collection. The revision is necessary to implement paperwork relief to qualified PHAs, as provided in Section 2702 of Title VII—Small Public Housing Authorities Paperwork Reduction Act, of the Housing and Economic Recovery Act of 2008.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–12702 Filed 5–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–09]

Notice of Proposed Information Collection for Public Comment; Training Evaluation Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 26, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.5564, (this is not a toll-free number) or e-mail Mr. McKinney at *Leroy.McKinneyJr@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Training Evaluation Form.

OMB Control Number: 2577—Pending.

Description of the need for the information and proposed use: On September 19, 2005 (70 FR 54983), HUD published a final rule amending the

regulations of the Public Housing Operating Fund Program at 24 CFR part 990, which was developed through negotiated rulemaking. Part 990 provides a new formula for distributing operating subsidy to public housing agencies (PHAs) and establishes requirements for PHAs to convert to asset management.

Subpart H of the part 990 regulations (§§ 990.255 to 990.290) establishes the requirements regarding asset management. Under § 990.260(a), PHAs that own and operate 250 or more dwelling rental units must operate using an asset management model consistent with the subpart H regulations. However, for calendar year 2008, that regulation is superseded by § 225 of Title II of Division K of the Consolidated Appropriations Act, 2008, Public Law 110–161 (approved December 26, 2007). Under that law, PHAs that own or operate 400 or fewer units may elect to transition to asset management, but they are not required to do so.

The Consolidated Appropriations Act, 2008, Public Law 110–161, also provided " * * * $5,940,000 for competitive grants and contracts to third parties for the provision of technical assistance to public housing agencies related to the transition and implementation of asset-based management in public housing." The contract now in effect will provide for web-based training, on-site seminars and on-site technical assistance to assist PHAs in implementing asset management. The Training Evaluation Form will be used by the Office of Public and Indian Housing to determine how the training and technical assistance can be improved to meet PHA needs.

Agency form number, if applicable: Pending.

Members of affected public: Public housing agencies.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 29,288 annually with one response per respondent. The average number for each response is .033 hours, for a total reporting burden of 966 hours.

Status of the proposed information collection: New collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 20, 2010.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.

[FR Doc. 2010–12705 Filed 5–25–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO220000–L10200000.PH0000.00000000; OMB Control Number 1004–0019]

Information Collection; Grazing Management

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0019 under the Paperwork Reduction Act. The respondents are individuals, households, farms and businesses interested in cooperating with the BLM in constructing or maintaining range improvement projects to aid in handling and caring for domestic livestock authorized by BLM to graze on public lands.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before June 25, 2010 in order to be assured of consideration.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0019), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov*. Please mail a copy of your comments to: Bureau Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401 LS, Washington, DC 20240. You may also send a copy of your comments by electronic mail to *jean_sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Mayberry, Bureau of Land Management, Rangeland Resources Division, at (202) 912–7229. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8339, 24 hours a day, seven days a week, to contact Mr. Mayberry.

SUPPLEMENTARY INFORMATION:

Title: Grazing Management (43 CFR 4120).

OMB Number: 1004–0019.

Forms: 4120–6 (Cooperative Range Improvement Agreement), and 4120–7 (Range Improvement Permit).

Abstract: The Bureau of Land Management proposes to extend the currently approved collections of information, which enables the BLM to make decisions regarding proposed range improvement projects.

60–Day Notice: On January 25, 2010, the BLM published a 60-day notice (75 FR 3914) requesting comments on the proposed information collection. The comment period ended on March 26, 2010. One comment was received. The comment did not address, and was not germane to, this information collection; rather, it was a general invective about the Department of the Interior, the BLM, and Washington politicians. Therefore, we have no response to the comment.

Current Action: This proposal is being submitted to extend the expiration date of May 31, 2010.

Type of Review: 3-year extension.

Affected Public: Individuals, households, farms and businesses.

Obligation to Respond: Required to obtain or retain benefits.

Annual Responses: 1,216.

Annual Burden Hours: 1,799.

There is no filing fee associated with each of these information collections. The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB control number 1004–0019 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may

be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Jean Sonneman,

Acting Information Collection Clearance Officer.

[FR Doc. 2010–12707 Filed 5–25–10; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Concession Contracts; Implementation of Alternate Valuation Formula for Leasehold Surrender Interest in the Signal Mountain Lodge and Leek's Marina Proposed Concession Contract, Grand Teton National Park

AGENCY: National Park Service; Interior.

ACTION: Notice.

SUMMARY: The National Park Service (NPS), by notice in the **Federal Register** dated February 1, 2010, invited public comments on a proposed alternative formula for the valuation of leasehold surrender interest (LSI) pursuant to authority contained in Public Law 105–391 enacted in 1998 (the 1998 Act) to be included in its proposed concession contract GRTE003–11 for operation of the Signal Mountain Lodge and Leeks Marina at Grand Teton National Park (new contract). NPS invites further public comment in the proposed LSI alternative.

DATES: Public comments will be accepted on or before June 25, 2010.

ADDRESSES: Send comments to Ms. Jo Pendry, Chief, Commercial Services Program, National Park Service, 1201 Eye Street, NW., 11th Floor, Washington, DC 20005, or via e-mail at *jo_pendry@nps.gov* or via fax at 202–371–2090.

FOR FURTHER INFORMATION CONTACT: Jo Pendry, Chief Commercial Services Program, 202–513–7156.

SUPPLEMENTARY INFORMATION: Public comments received in response to the February 1, 2010, **Federal Register** notice regarding the proposed LSI alternative expressed concerns, among other matters, that the notice did not contain a sufficient explanation of the relationship of the proposed LSI alternative to the objectives of providing a fair return to the government and fostering competition for the new contract. For this reason, NPS considers it appropriate to provide a further opportunity for public comment on the proposed LSI alternative. Although NPS, among other matters, is considering the possibility of changing the currently proposed LSI provisions of the new contract with respect to the treatment of fixtures for LSI purposes, the NPS will not make a final administrative decision in regard to the proposed LSI alternative until after full consideration of all public comments received in response to both this and the February 1, 2010, **Federal Register** notice. The submission date for proposals for the new contract has been extended to August 10, 2010, by notice in FedBizOpps (*FedBizOpps.gov*) under Solicitation No. GRTE003–11 published on April 29, 2010.

The standard formula for LSI value for applicable improvements provided by a concessioner under a National Park Service concession contract as defined in 36 CFR Part 51 ("standard LSI formula") is as follows:

(1) The initial construction cost of the related capital improvement;

(2) Adjusted by (increased or decreased) the same percentage increase or decrease as the percentage increase or decrease in the Consumer Price Index from the date the Director approves the substantial completion of the construction of the related capital improvement to the date of payment of the leasehold surrender interest value;

(3) Less depreciation of the related capital improvement on the basis of its condition as of the date of termination or expiration of the applicable leasehold surrender interest concession contract, or, if applicable, the date on which a concessioner ceases to utilize a related capital improvement (*e.g.,* where the related capital improvement is taken out of service by the Director pursuant to the terms of a concession contract).

However, Section 405(a)(4) of Public Law 105–391 authorizes the inclusion of alternative LSI value formulas in concession contracts (such as the new contract) estimated to have an LSI value in excess of $10,000,000. Under this authority, the proposed LSI alternative is as follows:

(1) Initial LSI Value. The reduction of the initial LSI value under the new contract on a monthly straight line depreciation basis applying a 40-year recovery period regardless of asset class. There is no adjustment of the initial LSI value as a result of the installation (including replacement) of fixtures in the related capital improvements during the term of the proposed contract; and

(2) New LSI Value. The reduction of the LSI value in any new structures or major rehabilitations constructed during the term of the new contract to be based on straight line depreciation and also apply a 40-year recovery period (on a monthly basis) with no asset class distinctions. The construction cost of new capital improvements will include the costs of installed fixtures. Any installation (or replacement) of fixtures after the initial construction would not alter the established LSI value in the improvements.

Section 405(a)(4) of the 1998 Act requires NPS, in certain circumstances, to determine that use of the LSI alternative, in comparison to the standard LSI formula, is necessary in order to provide a fair return to the government and to foster competition for the new contract by providing a reasonable opportunity for profit to the new concessioner.

With regard to a fair return to the government, under the standard LSI formula the amount of money paid (by the government, directly or indirectly) for LSI as of the expiration of the new contract is inevitably speculative at the time of contract solicitation, contract award, and during the contract term. This is because the future rate of the Consumer Price Index (CPI), the amount of future physical depreciation that will occur, and the cost to cure such future physical depreciation, must all be estimated in advance of the new contract by both NPS and prospective concessioners.

As a consequence, if the NPS were to establish the required minimum franchise fee for the new contract under the terms of the standard LSI formula, that minimum fee necessarily would incorporate speculative estimates of these factors. Likewise, if a prospective concessioner offered to meet or exceed the minimum franchise fee established by NPS under the standard LSI formula, its business decision would necessarily be made in reliance on speculative estimates of future CPI and future physical depreciation of LSI improvements.

If the NPS depreciation and CPI assumptions made at the time of contract solicitation ultimately prove to be inaccurate, its minimum franchise fee will result in a less than fair return to the government. NPS therefore believes, subject to review of public comments, that the proposed LSI alternative, in comparison to the standard LSI formula, will better provide a fair return to the government under the new contract.

NPS also believes (again, subject to review of public comments) that eliminating the speculative aspect of LSI value will help foster competition for the new contract by providing a reasonable opportunity to make a profit. This is because prospective

concessioners will know not only the amount of money they will be obliged to pay the prior concessioner for existing LSI under the terms of the new contract, but also will know with a high degree of certainty how much money they will recover from this payment upon the expiration of the new contract (based on the 40-year amortization period). The proposed LSI alternative effectively eliminates the speculation about physical depreciation and CPI that is required for proposed contracts under the standard LSI formula. The resulting lower risk and greater certainty in the business opportunity will foster competition for the new contract by providing a reasonable opportunity to make a profit.

The proposed LSI alternative is projected to provide approximately the same rate of return for the new concessioner as the standard LSI formula. This is because, in developing the minimum franchise fee under the proposed LSI alternative, NPS estimated that the new contract would provide the new concessioner with a reasonable opportunity to make a net profit. This estimate took into consideration, among other matters, applicable industry rate of return expectations, the purchase price of the existing LSI improvements, and the LSI value that will be payable to the concessioner after contract expiration under the proposed LSI alternative. If the standard LSI formula were utilized, the projected LSI value payment to the new concessioner would necessarily be much higher, resulting in a much higher minimum franchise fee for the new contract.

In other words, the lower LSI value payment upon contract expiration under the proposed LSI alternative (as opposed to the standard LSI formula) results in a lower minimum franchise fee, and achieves the same approximate projected rate of return to the concessioner. The proposed LSI alternative results in increased cash flows to the concessioner during the entire term of the contract, while the standard LSI formula provides a higher payment of LSI at the expiration of the contract.

The proposed LSI alternative, if adopted by NPS, would be applicable only to the new contract, GRTE003–11. NPS has made no decision to apply the proposed LSI alternative or any other LSI alternative to future concession contracts. If the same or other alternative LSI formulas are considered for utilization in subsequent contracts pursuant to Section 405(a)(4) of the 1998 Act, opportunities for public comment will be provided as required. NPS will provide notice of its final decision regarding the LSI provisions of the new contract in the **Federal Register** and/or in FedBizOpps (*FedBizOpps.gov* under Solicitation No. CC–GRTE003–11).

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Daniel N. Wenk,

Deputy Director, Operations.

[FR Doc. 2010–12703 Filed 5–25–10; 8:45 am]

BILLING CODE 4312–53–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Legislative Environmental Impact Statement for the Harvest of Glaucous-Winged Gull Eggs by the Huna Tlingit in Glacier Bay National Park

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of the Final Legislative Environmental Impact Statement for the Harvest of Glaucous-Winged Gull Eggs by the Huna Tlingit in Glacier Bay National Park.

SUMMARY: The National Park Service (NPS) announces the availability of a final Legislative Environmental Impact Statement (LEIS) for the harvest of glaucous-winged gull eggs by the Huna Tlingit in Glacier Bay National Park. The document describes and analyzes the environmental impacts of a preferred alternative and one additional action alternative for managing a limited harvest of glaucous-winged gull eggs. A no action alternative is also evaluated. This notice announces the availability of the final LEIS.

DATES: A Record of Decision will be made no sooner than 30 days after the date the Environmental Protection Agency's Notice of Availability for this final LEIS appears in the **Federal Register**.

ADDRESSES: The final LEIS may be viewed online at *http://parkplanning.nps.gov.* Hard copies of the final LEIS are available on request from the address below.

FOR FURTHER INFORMATION CONTACT: Mary Beth Moss, Project Manager, Glacier Bay National Park and Preserve, *Telephone:* (907) 723–1777.

SUPPLEMENTARY INFORMATION: The NPS has prepared an LEIS to analyze the effects of authorizing the limited collection of glaucous-winged gull eggs within Glacier Bay National Park by Hoonah Indian Association (HIA; the federally recognized government of the Huna Tlingit) tribal members. Glacier Bay is the traditional homeland of the Huna Tlingit who traditionally harvested eggs there prior to park establishment. The practice was curtailed in the 1960s, as the Migratory Bird Treaty Act and federal regulations prohibit it. In the late 1990s, at the behest of tribal leaders, the NPS agreed to explore ways to authorize this important cultural tradition. Section 4 of the Glacier Bay National Park Resource Management Act of 2000 directed the Secretary of Interior, in consultation with local residents, to assess whether gull eggs could be collected in Glacier Bay National Park on a limited basis without impairing the biological sustainability of the gull population. The Act further requires that the Secretary submit recommendations for legislation to Congress if the study determines that gull egg harvest could occur without impairing the biological sustainability of the park's gull population. NPS commissioned ethnographic and biological studies to inform the analysis included in this LEIS.

The NPS outlined a range of alternatives based on project objectives, park resources and values, and public input and analyzed the impacts each would have on the biological and human environment.

Alternative 1: No Action: This alternative serves as a baseline for evaluating the impacts of the action alternatives. This alternative would not authorize the harvest of glaucous-winged gull eggs in Glacier Bay National Park. Glaucous-winged gulls would continue to breed in Glacier Bay without human disturbance.

Alternative 2: This alternative would propose legislation to authorize the annual harvest of glaucous-winged gull eggs at up to two designated locations on a single pre-selected date on or before June 9 of each year.

Alternative 3: NPS Preferred Alternative: Alternative 3 would propose legislation to authorize the annual harvest of glaucous-winged gull eggs at up to five designated locations in Glacier Bay National Park on two separate dates. A first harvest visit would be authorized to occur at each of the open sites on or before the 5th day following onset of laying as determined by NPS staff monitoring a reference site. A second harvest at the same sites

would be authorized to occur within nine days of the first harvest.

Both action alternatives would manage harvest activities under the guidelines of a harvest management plan cooperatively developed by the NPS and the HIA. NPS would conduct monitoring activities to ensure that park resources and values were not impacted. The Superintendent would retain the authority to close gull colonies to harvest.

Victor W. Knox,

Acting Regional Director, Alaska.

[FR Doc. 2010–12608 Filed 5–25–10; 8:45 am]

BILLING CODE 4312–HX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2010–N094; 30120–1113–000–F6]

Endangered and Threatened Wildlife and Plants; Indiana Bat; Notice of Intent To Prepare a Draft Environmental Impact Statement for a Proposed Habitat Conservation Plan and Incidental Take Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement and draft habitat conservation plan; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) intend to prepare a draft environmental impact statement (EIS) to evaluate the impacts of several alternatives relating to the proposed issuance of an Endangered Species Act Permit to EverPower Wind Holdings, Inc., its subsidiary Buckeye Wind LLC, and its affiliates (applicant) for incidental take of the Indiana bat (*Myotis sodalis*), a Federal endangered species, from activities associated with the construction and operation of a wind power project in Champaign County, Ohio. We also announce a public comment period.

DATES: To ensure consideration, please send your written comments by June 25, 2010.

ADDRESSES: You may submit comments by one of the following methods:

U.S. mail or hand-delivery: Ms. Megan Seymour, U.S. Fish and Wildlife Service, Ohio Field Office, 4625 Morse Rd., Suite 104, Columbus, OH 43230;

E-mail comments: EverPowerHCP@fws.gov; or

Fax: (614) 416–8994 (Attention: Megan Seymour).

FOR FURTHER INFORMATION CONTACT: Ms. Megan Seymour, at (614) 416–8993, extension 16. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at (800) 877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION: We publish this notice in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), and its implementing regulations (40 CFR 1506.6), and section 10(c) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). We intend to gather the information necessary to determine impacts and alternatives to support a decision regarding the potential issuance of an incidental take permit to the applicant, and the implementation of the supporting draft HCP. We intend to prepare an EIS to evaluate the impacts of several alternatives relating to the proposed issuance of an incidental take permit under the Act. The applicant proposes to apply for an incidental take permit through development and implementation of an HCP. The proposed HCP will cover take of the Indiana bat that is incidental to activities associated with the construction and operation of the applicant's Buckeye Wind Energy project and will include measures necessary to minimize and mitigate impacts to the Indiana bat and its habitat to the maximum extent practicable.

Public Comments

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. These comments will be considered by the Service in developing a draft EIS and in the development of an HCP and ITP. We particularly seek comments concerning:

(1) Biological information concerning the Indiana bat;

(2) Relevant data concerning wind power and bat interactions;

(3) Additional information concerning the range, distribution, population size, and population trends of the Indiana bat;

(4) Current or planned activities in the subject area and their possible impacts on the Indiana bat;

(5) The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and

(6) Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials considering this notice by one of the methods listed in the **ADDRESSES** section. If you previously submitted comments on this project during the public comment period associated with **Federal Register** notice 75 FR 4840 (published January 29, 2010), you need not resubmit your comments. All previously received comments on this project will be considered in development of the draft EIS.

Comments and materials we receive, as well as supporting documentation we use in preparing the NEPA document, will be available for public inspection by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ohio Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of this notice on the Internet at: *http://www.fws.gov/midwest/Endangered/permits/hcp/r3hcps.html,* or by mail from the Ohio Field Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Background

Section 9 of the Act prohibits "taking" of fish and wildlife species listed as endangered under section 4 of the Act. The Act's implementing regulations extend, under certain circumstances, the prohibition of take to threatened species. Under section 3 of the Act, the term "take" means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The term "harm" is defined by regulation as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR 17.3). The term "harass" is defined in the regulations as "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering" (50 CFR 17.3). Section 10(a)(1)(B) of the Act requires an applicant for an incidental take permit to prepare an HCP that describes: (1) The impact that will result from such taking; (2) the steps the applicant will take to minimize and mitigate that take to the maximum extent practicable, and the funding that will be available to implement such steps; (3) the

alternative actions to such taking that the applicant considered and the reasons why such alternatives are not being utilized; and (4) the other measures that the Service may require as being necessary or appropriate for the purposes of the plan. The Act requires the Service to issue an incidental take permit to an applicant when we determine that: (1) The taking will be incidental to otherwise lawful activities; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (3) the applicant has ensured that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the measures, if any, we require as necessary or appropriate for the purposes of the plan will be met. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

The Indiana bat was added to the list of Endangered and Threatened Wildlife and Plants on March 11, 1967 (32 FR 4001). It is currently listed as an endangered species under the Act. The population decline of this species is attributed to habitat loss and degradation of both winter hibernation habitat and summer roosting habitat, human disturbance during hibernation, and possibly pesticides. An additional and emerging threat to Indiana bats is White-Nose Syndrome, a recently discovered fungus (*Geomyces destructans*) that invades the skin of bats, causing ulcers which may alter hibernation arousal patterns, and which can cause emaciation. The range of the Indiana bat includes much of the eastern United States, and Ohio is located within the core maternity range of the bat. Winter habitat for the Indiana bat includes caves and mines that support high humidity and cool but stable temperatures. In the summer, Indiana bats roost under the loose bark of dead or dying trees. During summer males roost alone or in small groups, while females and their offspring roost in larger groups of up to 100 or more. Indiana bats forage for insects in and along the edges of forested areas and wooded stream corridors. Maternity colonies of Indiana bats have recently been detected in Champaign County, Ohio, though no Indiana bat hibernacula have been documented in this county.

Proposed Action

The proposed action is issuance of an incidental take permit for the Indiana bat during construction and operation of the applicant's Buckeye Wind Energy project. The proposed HCP, which must meet the requirements in section 10(a)(2)(A) of the Act, would be developed and implemented by the applicant.

The applicant is planning the development of a wind power project in Champaign County, Ohio. The project would be spread across 80,370 acres within portions of Union, Wayne, Urbana, Salem, Rush, and Goshen Townships. Development of the wind power project would include installation of up to 100 wind turbines and associated collection lines, access roads, utility lines, substations, operation and maintenance facility buildings, and temporary staging areas and concrete batch plants. The wind turbine hub height will be approximately 100 meters (m), and the rotor diameter will be approximately 100 m, for an approximate total height of 150 m at the rotor apex. Installation of each individual turbine will temporarily impact an area of approximately 2.9 acres, while the final footprint of each turbine will be approximately 0.2 acres. Access roads to the turbines will have a temporary width of up to 55 feet during construction, and a permanent width of 16–20 feet. Despite the relatively small acreage of land to be affected by the project, impacts to wildlife, particularly birds and bats, are anticipated.

The project is located in a rural setting, with the landscape primarily composed of agricultural properties. Woodlots are scattered throughout the project area. Several small towns (Mutual and Cable) occur within the project area, and individual homes and low-density residential areas are also scattered throughout.

The applicant, in conjunction with the Service, has determined that take of Indiana bats is likely to occur from development of the proposed wind power project. To authorize take, the applicant plans to develop an HCP and request issuance of an ITP from the Service.

Alternatives

Three action alternatives relating to the proposed issuance of an ITP to the applicant for activities associated with the construction and operation of the wind power project will be considered in the draft EIS, along with the potential impacts associated with each alternative. Each action alternative analyzed in the draft EIS will be compared to the No-Action alternative. The No-Action alternative represents estimated future conditions to which the proposed action can be compared.

No-Action Alternative

Under the No Action Alternative, an Incidental Take Permit (ITP) pursuant to Section 10 (a)(1)(B) of the Act would not be issued for development of the Buckeye Wind Project. The proposed Buckeye Wind Project and HCP would not occur without issuance of an ITP. According to the applicant, the Action Area would be reconsidered and the existing land uses would be maintained at the sites of proposed turbines and other Facility appurtenances until and unless an ITP could be secured. The proposed project purpose and need would not be met under the No Action Alternative.

Maximally Restricted Operations Alternative

Under the Maximally Restricted Operations Alternative, the Facility would be constructed as described under **Proposed Action**—*i.e.,* full build-out of up to 100 turbines. Minimization for potential impacts to Indiana bats would include shutting down turbines at night during the period from April 1 through October 31, the active period for Indiana bats, every year the Buckeye Wind Project is in operation.

Modified Operations Alternative

Under the Modified Operations Alternative, the Facility would be constructed as described under **Proposed Action**, *i.e.* full build-out of up to 100 turbines. Minimization for potential impacts to Indiana bats would include curtailment of turbines based on the habitat suitability for Indiana bats at each proposed turbine location. Habitat suitability will be determined based on habitat conditions at 43 roost locations and 1,124 foraging locations derived from radio telemetry data from 21 Indiana bats that were captured during mist-netting activity in 2008 and 2009 in Champaign, Logan, and Hardin Counties.

Non-Restricted Operations Alternative

Under the Non-Restricted Operations Alternative, the Facility would be constructed as described under **Proposed Action**—*i.e.,* full build-out of up to 100 turbines. No operational minimization for potential impacts to Indiana bats would occur.

Any preferred alternative developed by the Service is likely to contain various measures to avoid and minimize impacts to Indiana bats, including the impact of lethal take. Various methods that may be considered include, but are not limited to: Protection of roost trees and surrounding habitat, set-back distances from known roost trees, mapping and avoidance of foraging

areas, protection and enhancement of Indiana bat habitat outside the project area, various curtailment regimes for turbines during prime activity or migration periods, and post-construction monitoring for fatalities.

Environmental Review

The Service will conduct an environmental review to analyze various alternatives for implementing the proposed action and the associated impacts of each. The draft EIS will be the basis for the impact evaluation for Indiana bats and the range of alternatives to be addressed. The draft EIS is expected to provide biological descriptions of the affected species and habitats, as well as the effects of the alternatives on other resources such as vegetation, wetlands, wildlife, geology and soils, air quality, water resources, water quality, cultural resources, land use, recreation, water use, local economy, and environmental justice. Following completion of the environmental review, the Service will publish a notice of availability and a request for comments on the draft EIS and the applicant's permit application, which will include the draft HCP. The draft EIS and draft HCP are expected to be completed and available to the public in mid-2010.

Authority

This notice is being furnished as provided for by the NEPA Regulations (40 CFR 1501.7 and 1508.22). The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of issues to be considered. Comments and participation in this scoping process are solicited.

Dated: May 13, 2010.

Lynn M. Lewis,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 2010–12668 Filed 5–25–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM915000L14200000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by e-mail at *Marcella_Montoya@nm.blm.gov,* for assistance.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat, in four sheets, representing the dependent resurvey and survey in Township 13 North, Range 4 East, of the New Mexico Principal Meridian, accepted March 21, 2010, for Group 1094 NM.

The plat representing the dependent resurvey and survey in Township 29 North, Range 11 West, of the New Mexico Principal Meridian, accepted April 16, 2010, for Group 1101 NM.

The plat, in two sheets, representing the dependent resurvey and survey in Township 25 North, Range 10 West, of the New Mexico Principal Meridian, accepted April 13, 2010, for Group 1085 NM.

The plat, representing the dependent resurvey and survey, in Township 3 North, Range 7 West, of the New Mexico Principal Meridian, accepted April 20, 2010, for Group 1089 NM.

Indian Meridian, Oklahoma (OK)

The plat, in two sheets, representing the dependent resurvey and survey in Township 19 North, Range 8 East, of the Indian Meridian, accepted October 13, 2009, for Group 157 OK.

The plat representing the dependent resurvey and survey in Township 28 North, Range 23 East, of the Indian Meridian, accepted March 18, 2010, for Group 183 OK.

The plat representing the dependent resurvey and survey in Township 19 North, Range 22 East, of the Indian Meridian, accepted April 28, 2010, for Group 178 OK.

The plat, in eighteen sheets, representing the dependent resurvey and survey in Township 10 North, Range 25 East, of the Indian Meridian, accepted April 30, 2010, for Group 61 OK.

Polk County, Texas (TX)

The plat representing the dependent resurvey and survey of the Alabama-Coushatta Indian Reservation, accepted April 8, 2010, for Group 5 TX.

If a protest against a survey, as shown on any of the above plats, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Chief, Branch of Cadastral, Survey/GeoSciences.

[FR Doc. 2010–12672 Filed 5–25–10; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Rate Adjustments for Indian Irrigation Projects

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Rate Adjustments.

SUMMARY: The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation projects located on or associated with various Indian reservations throughout the United States. We are required to establish irrigation assessment rates to recover the costs to administer, operate, maintain, and rehabilitate these projects. We are notifying you that we have adjusted the irrigation assessment rates at several of our irrigation projects and facilities to reflect current costs of administration, operation, maintenance, and rehabilitation.

DATES: *Effective Date:* The irrigation assessment rates shown in the tables as final are effective as of January 1, 2010.

FOR FURTHER INFORMATION CONTACT: For details about a particular BIA irrigation project or facility, please use the tables in the **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project or facility is located.

SUPPLEMENTARY INFORMATION:

I. Effect of This Notice

Does this notice affect me?

This notice affects you if you own or lease land within the assessable acreage

of one of our irrigation projects, or if you have a carriage agreement with one of our irrigation projects.

What irrigation assessments or charges are adjusted by this notice for the 2010 season?

The rate table below contains the current, final rates for the 2010 season for all irrigation projects where we recover costs of administering, operating, maintaining, and rehabilitating them. An asterisk following the name of the project notes the irrigation projects where the 2010 rates are different from the 2009 rates.

Project name	Rate category	Final 2009 rate	Final 2010 rate
Northwest Region Rate Table			
Flathead Irrigation Project*	Basic per acre—A	$23.45	$23.45
	Basic per acre—B	10.75	11.75
	Minimum Charge per tract	65.00	65.00
Fort Hall Irrigation Project	Basic per acre	40.50	40.50
	Minimum Charge per tract	30.00	30.00
Fort Hall Irrigation Project—Minor Units	Basic per acre	21.00	21.00
	Minimum Charge per tract	30.00	30.00
Fort Hall Irrigation Project—Michaud	Basic per acre	41.50	41.50
	Pressure per acre	58.00	58.00
	Minimum Charge per tract	30.00	30.00
Wapato Irrigation Project—Toppenish/Simcoe Units	Minimum Charge for per tract	15.00	15.00
	Basic per acre	15.00	15.00
Wapato Irrigation Project—Ahtanum Units	Minimum Charge per tract	15.00	15.00
	Basic per acre	15.00	15.00
Wapato Irrigation Project—Satus Unit*	Minimum Charge per tract	58.00	60.00
	"A" Basic per acre	58.00	60.00
	"B" Basic per acre	68.00	70.00
Wapato Irrigation Project—Additional Works*	Minimum Charge per tract	63.00	65.00
	Basic per acre	63.00	65.00
Wapato Irrigation Project—Water Rental*	Minimum Charge	70.00	72.00
	Basic per acre	70.00	72.00
Rocky Mountain Region Rate Table			
Blackfeet Irrigation Project*	Basic-per acre	18.00	19.00
Crow Irrigation Project—Willow Creek O&M (includes Agency, Lodge Grass #1, Lodge Grass #2, Reno, Upper Little Horn, and Forty Mile Units)*.	Basic-per acre	20.80	22.80
Crow Irrigation Project—All Others (includes Bighorn, Soap Creek, and Pryor Units)*.	Basic-per acre	20.50	22.50
Crow Irrigation Two Leggins Drainage District	Basic-per acre	2.00	2.00
Fort Belknap Irrigation Project	Basic-per acre	14.75	14.75
Fort Peck Irrigation Project*	Basic-per acre	24.00	24.70
Wind River Irrigation Project*	Basic-per acre	18.00	20.00
Wind River Irrigation Project—LeClair District*	Basic-per acre	19.00	27.00
Wind River Irrigation Project—CrowHeart Unit*	Basic-per acre	18.00	14.00
Southwest Region Rate Table			
Pine River Irrigation Project	Minimum Charge per tract	50.00	50.00
	Basic-per acre	15.00	15.00
Western Region Rate Table			
Colorado River Irrigation Project*	Basic per acre up to 5.75 acre-feet	51.00	52.50
	Excess Water per acre-foot over 5.75 acre-feet	17.00	17.00
Duck Valley Irrigation Project	Basic per acre	5.30	5.30
Fort Yuma Irrigation Project (See Note #1)*	Basic per acre up to 5.0 acre-feet	77.00	86.00
	Excess Water per acre-foot over 5.0 acre-feet	14.00	14.00
	Basic per acre up to 5.0 acre-feet (Ranch 5)	77.00	86.00
San Carlos Irrigation Project (Joint Works) (See Note # 2).	Basic per acre	21.00	21.00
San Carlos Irrigation Project (Indian Works)	Basic per acre	57.00	57.00
Uintah Irrigation Project	Basic per acre	15.00	15.00
	Minimum Bill	25.00	25.00
Walker River Irrigation Project*	Basic per acre, Indian	16.00	19.00
	Basic per acre, non-Indian	16.00	19.00

*Notes irrigation projects where rates have been adjusted.

Note #1—The O&M rate for the Fort Yuma Irrigation Project has two components. The first component is the O&M rate established by the Bureau of Reclamation (BOR), the owner and operator of the Project. The BOR rate for 2010 is $79.00/acre. The second component is for the O&M rate established by BIA to cover administrative costs including billing and collections for the Project. The 2010 BIA rate remains unchanged at $7.00/acre. The rates shown include the 2010 Reclamation rate and the 2010 BIA rate.

Note #2—The 2010 rate was established by final notice published in the **Federal Register** on April 22, 2009 (Vol. 74, No. 76, page 18398).

When will BIA publish irrigation assessments or charges for the 2011 season?

We published some proposed rates for the 2011 season in the **Federal Register** on October 23, 2009 (74 FR 54848), and we will publish other proposed 2011 rates in the near future. We will publish the 2011 season final rates in the **Federal Register** after considering any comments that we receive on our proposals. (We have already published final rates for the 2011 season for the San Carlos Irrigation Project (74 FR 40227).)

Project name	Rate category	Final 2009 rate	Final 2010 rate	Final 2011 rate
Western Region Rate Table				
San Carlos Irrigation Project (Joint Works) (See Note #3).	Basic per acre	$21.00	$21.00	$25.00

Note #3–The 2011 rate was established by final notice published in the **Federal Register** on August 11, 2009 (Vol. 74, No. 153, page 40227).

Has a Notice of Proposed Rate Adjustment been published?

Yes. A Notice of Proposed Rate Adjustment was published in the **Federal Register** on October 23, 2009 (74 FR 54846) to propose adjustments to the irrigation assessment rates at several BIA irrigation projects. The public and interested parties were provided an opportunity to submit written comments during the 60-day period that ended December 22, 2009.

Did the BIA defer or change any proposed rate increases?

No.

II. Responses to Comments on Proposed Rate Adjustments

Did the BIA receive any comments on the proposed irrigation assessment rate adjustments?

BIA received written comments related to the proposed rate adjustments for the Crow Irrigation Project and the Wapato Irrigation Project.

What issues were of concern to the commenters?

Commenters raised concerns specific to the Crow Irrigation Project about the following issues: (1) Opposition to the $2.00 rate increase for 2010; (2) opposition to the amount of the operation and maintenance (O&M) budget spent on administration and salaries versus maintenance projects; (3) lack of supervision and direction during the irrigation season; (4) opposition to the hiring of additional project employees; (5) efficiencies of contracting with private entities to perform O&M; and (6) impact of rate increases on the local agricultural economy and individual land owners.

Commenters raised concerns specific to the Wapato Irrigation Project on the proposed rates about one or more of the following issues: (1) Objection that the underlying O&M charges are inconsistent with the Yakama Nation's litigation position in the pending appeals ; and (2) assertion concerning BIA's responsibility to manage land that is designated for irrigation water delivery.

The following comments are specific to the Crow Irrigation Project: How does the BIA respond to the opposition to the $2.00 rate increase for 2010?

The proposed 2010 O&M budget for the Crow Irrigation Project budget was prepared in accordance with BIA financial guidelines. The BIA considers the following when determining an irrigation project's budget: project personnel costs; materials and supplies; vehicle and equipment repairs; equipment; capitalization expenses; acquisition expenses; rehabilitation costs; maintenance of a reserve fund for contingencies or emergencies; and other expenses that are determined to be necessary to operate and maintain an irrigation project. The proposed 2010 O&M budget for the Crow Irrigation Project contains increased amounts in staffing, contracts, and materials in an effort to address increasing project rehabilitation needs. These increased budget amounts support the rate increase of $2.00.

How does the BIA respond to the opposition to the amount of O&M budget spent on administration and salaries versus maintenance projects?

The proposed 2010 O&M budget for the Crow Irrigation Project is an increase of approximately three percent (3%) over the 2009 O&M budget. Administrative salaries have been held steady from 2009 to 2010 at approximately 28% to 29% of the entire budget. In 2009 the amount budgeted for maintenance contracts and materials was 16% of the budget total and in 2010 that amount was increased to 32% of the budget total. The BIA is committed to working with local stakeholders in the development of other cost-saving options. Examples of cost-saving options include stakeholder contracts or agreements for selected O&M functions within the project boundaries.

How does the BIA respond to the lack of supervision and direction during the irrigation season?

At the end of the 2008 irrigation season, the Crow Irrigation Supervisory Project Engineer vacated to take a new position. In early March 2009, the BIA advertised for new Crow Irrigation Supervisory Project Engineer. Later that month, the BIA entered into negotiations with the Crow Tribe in response to its request to contract all of the O&M functions of the Crow Irrigation Project for the 2009 season. These contract negotiations resulted in cancellation of the Project Engineer vacancy announcement. The Crow Tribe subsequently canceled its request for contracting options, and the supervisory position went unfilled in the 2009 irrigation season. Currently, BIA is pursuing a stakeholder cooperative agreement for O&M activities for the 2010 season. The extent of O&M cooperative agreements will help BIA determine the type of supervision required at the Crow Irrigation Project for 2010.

How does the BIA respond to opposition to the hiring of additional project employees?

In July 2008, the BIA conducted a program review of the Crow Irrigation Project and found, "the number of equipment operators and irrigation system operators is insufficient. This reduces the amount of control the project has over water deliveries. Most if not all repair work is reactionary versus planned." (2008 Program Review, Crow Irrigation Project, page 8). In the follow-up Corrective Action Plan, the Project and Regional staff agreed to increase staff to fill vacant positions and/or pursue stakeholder agreements to increase the level of maintenance activities. The final decision on hiring additional field staff for 2010 is dependent on the development of

stakeholder agreements. Likewise, the timing of a new Project Engineer is also dependent on the development of stakeholder agreements.

How does the BIA respond to the efficiencies of contracting with private entities to perform O&M?

The BIA agrees with the potential for efficiency increases through contracting options. The BIA continues to encourage stakeholder cooperative agreements for selected O&M activities for the 2010 season.

How does the BIA respond to how rate increases impact the local agricultural economy and individual land owners?

The BIA's projects are important economic contributors to the local communities they serve. These projects contribute millions of dollars in crop value annually. Historically, the BIA tempered irrigation rate increases to demonstrate sensitivity to the economic impact on water users. This past practice resulted in a rate deficiency at some irrigation projects. The BIA does not have discretionary funds to subsidize irrigation projects. Funding to operate and maintain these projects needs to come from revenues from the water users served by those projects.

The BIA's irrigation program has been the subject of several Office of Inspector General (OIG) and U.S. Government Accountability Office (GAO) audits. In the most recent OIG audit, No. 96–I–641, March 1996, the OIG concluded:

> Operation and maintenance revenues were insufficient to maintain the projects, and some projects had deteriorated to the extent that their continued capability to deliver water was in doubt. This occurred because operation and maintenance rates were not based on the full cost of delivering irrigation water, including the costs of systematically rehabilitating and replacing project facilities and equipment, and because project personnel did not seek regular rate increases to cover the full cost of project operation.

A previous OIG audit performed on one of the BIA's largest irrigation projects, the Wapato Indian Irrigation Project, No. 95–I–1402, September 1995, reached the same conclusion.

To address the issues noted in these audits, the BIA must systematically review and evaluate irrigation assessment rates and adjust them, when necessary, to reflect the full costs to operate and perform all appropriate maintenance on the irrigation project or facility infrastructure to ensure safe and reliable operation. If this review and adjustment is not accomplished, a rate deficiency can accumulate over time. Rate deficiencies force the BIA to raise irrigation assessment rates in larger increments over shorter periods of time than would have been otherwise necessary.

The following comments are specific to the Wapato Irrigation Project: How does BIA respond to concerns that the operation and maintenance charges reflected in the 2010 rates conflict with the Yakama Nation's position in pending appeals of these charges?

The Yakama Nation, which is served by the Wapato Irrigation Project, has an administrative appeal regarding the BIA charging the irrigation operation and maintenance on trust lands. Because this is a legal issue currently being appealed and does not specifically target the rate change, it will not be discussed in this notice.

How does the BIA respond to comments regarding the BIA's trust responsibility to enhance idle tracts to make them productive?

As stated in the answer to the preceding question, the BIA has no trust obligation to operate and maintain irrigation projects. *See, e.g., Grey* v. *United States,* 21 Cl. Ct. 285 (1990), *aff'd,* 935 F.2d 281 (Fed. Cir. 1991), *cert. denied,* 502 U.S. 1057 (1992). This means the BIA has no obligation to enhance idle tracks of land. However, recognizing the potential benefits to projects from such enhancements, the updated Irrigation O&M regulations (25 CFR part 171.610) provide for an incentive to potential lessees who want to lease project land that is not being farmed (idle land). The lessee is eligible to enter into an incentive agreement with BIA. Under such an incentive agreement, BIA is able to waive operation and maintenance (O&M) fees for up to three years while improvements are made to bring lands that are currently idle back into production. This feature provides benefits to landowners, who can more readily lease their lands; to lessees, who experience reduced costs associated with bringing lands back into production through reduced or waived O&M assessments; and to the projects, which realize a more stable and productive land base.

III. Further Information on this Notice

Where can I get information on the regulatory and legal citations in this notice?

You can contact the appropriate office(s) stated in the tables for the irrigation project that serves you, or you can use the Internet site for the Government Printing Office at *http://www.gpo.gov.*

What authorizes you to issue this notice?

Our authority to issue this notice is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 14, 1914 (38 Stat. 583; 25 U.S.C. 385). The Secretary has in turn delegated this authority to the Assistant Secretary—Indian Affairs under Part 209, Chapter 8.1A, of the Department of the Interior's Departmental Manual.

Who can I contact for further information?

The following tables are the regional and project/agency contacts for our irrigation facilities.

Project Name	Project/Agency Contacts
Northwest Region Contacts	
Stanley Speaks, Regional Director, Bureau of Indian Affairs, Northwest Regional Office, 911 NE. 11th Avenue, Portland, Oregon 97232–4169, Telephone: (503) 231–6702.	
Flathead Irrigation Project	Chuck Courville, Superintendent, Flathead Agency Irrigation Division, P.O. Box 40, Pablo, MT 59855–0040, Telephone: (406) 675–2700.
Fort Hall Irrigation Project	Eric J. LaPointe, Superintendent, Dean Fox, Deputy Superintendent, Daniel Harelson, Irrigation Project Engineer, Fort Hall Agency, P.O. Box 220, Fort Hall, ID 83203–0220, Telephone: (208) 238–1992.
Wapato Irrigation Project	Pierce Harrison, Project Administrator, Wapato Irrigation Project, P.O. Box 220, Wapato, WA 98951–0220, Telephone: (509) 877–3155.

Project Name	Project/Agency Contacts
Rocky Mountain Region Contacts	
Ed Parisian, Regional Director, Bureau of Indian Affairs, Rocky Mountain Regional Office, 316 North 26th Street, Billings, Montana 59101, Telephone: (406) 247–7943.	
Blackfeet Irrigation Project	Stephen Pollock, Superintendent, Ted Hall, Irrigation Project Manager, Box 880, Browning, MT 59417, Telephones: (406) 338–7544, Superintendent, (406) 338–7519, Irrigation Project Manager.
Crow Irrigation Project	Judy Gray, Superintendent, Vacant, Irrigation Project Manager, P.O. Box 69, Crow Agency, MT 59022, Telephones: (406) 638–2672, Superintendent, (406) 638–2863, Irrigation Project Manager.
Fort Belknap Irrigation Project	Jim Montes, Acting Superintendent, Vacant, Irrigation Project Manager, (Project operations & management contracted by the Tribes), R.R.1, Box 980, Harlem, MT 59526, Telephones: (406) 353–2901, Superintendent, (406) 353–2905, Irrigation Project Manager.
Fort Peck Irrigation Project	Florence White Eagle, Superintendent, P.O. Box 637, Poplar, MT 59255, Vacant, Irrigation Manager, 602 6th Avenue North, Wolf Point, MT 59201, Telephones: (406) 768–5312, Superintendent, (406) 653–1752, Irrigation Manager.
Wind River Irrigation Project	Ed Lone Fight, Superintendent, Sheridan Nicholas, Irrigation Project Engineer, P.O. Box 158, Fort Washakie, WY 82514, Telephones: (307) 332–7810, Superintendent, (307) 332–2596, Irrigation Project Manager.
Southwest Region Contacts	
William T. Walker, Regional Director, Bureau of Indian Affairs, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104, Telephone: (505) 563–3100.	
Pine River Irrigation Project	John Waconda, Superintendent, Vacant, Irrigation Engineer, P.O. Box 315, Ignacio, CO 81137–0315, Telephones: (970) 563–4511, Superintendent, (970) 563–9484, Irrigation Engineer.
Western Region Contacts	
Vacant, Regional Director, Bureau of Indian Affairs, Western Regional Office, 2600 N, Central Avenue, 4th Floor Mailroom, Phoenix, Arizona 85004, Telephone: (602) 379–6600.	
Colorado River Irrigation Project	Janice Staudte, Superintendent, Ted Henry, Irrigation Project Manager, 12124 1st Avenue, Parker, AZ 85344, Telephone: (928) 669–7111.
Duck Valley Irrigation Project	Joseph McDade, Superintendent, 1555 Shoshone Circle, Elko, NV 89801, Telephone: (775) 738–5165.
Fort Yuma Irrigation Project	Marlene Walker, Acting Superintendent, P.O. Box 11000, Yuma, AZ 85366, Telephone: (520) 782–1202.
San Carlos Irrigation Project Joint Works.	Bryan Bowker, Project Manager, Clarence Begay, Irrigation Manager, P.O. Box 250, Coolidge, AZ 85228, Telephone: (520) 723–6215.
San Carlos Irrigation Project Indian Works.	Cecilia Martinez, Superintendent, Joe Revak, Supervisory General Engineer, Pima Agency, Land Operations, P.O. Box 8, Sacaton, AZ 85247, Telephone: (520) 562–3326, Telephone: (520) 562–3372.
Uintah Irrigation Project	Daniel Picard, Superintendent, Dale Thomas, Irrigation Manager, P.O. Box 130, Fort Duchesne, UT 84026, Telephone: (435) 722–4300, Telephone: (435) 722–4341.
Walker River Irrigation Project	Athena Brown, Superintendent, 311 E. Washington Street, Carson City, NV 89701, Telephone: (775) 887–3500.

IV. Administrative Requirements

Consultation and Coordination With Tribal Governments (Executive Order 13175)

To fulfill its consultation responsibility to tribes and tribal organizations, BIA communicates, coordinates, and consults on a continuing basis with these entities on issues related to water delivery, water availability, and costs of administration, operation, maintenance, and rehabilitation of projects that concern them. This is accomplished at the individual irrigation project by project, agency, and regional representatives, as appropriate, in accordance with local protocol and procedures. This notice is one component of our overall coordination and consultation process to provide notice to these entities when we adjust irrigation assessment rates.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (Executive Order 13211)

The rate adjustments will have no adverse effects on energy supply, distribution, or use (including a shortfall in supply, price increases, and increase use of foreign supplies) as this rate adjustment is implemented. This is a notice for rate adjustments at BIA-owned and operated irrigation projects, except for the Fort Yuma Irrigation Project. The Fort Yuma Irrigation Project is owned and operated by the Bureau of Reclamation with a portion serving the Fort Yuma Reservation.

Regulatory Planning and Review (Executive Order 12866)

These rate adjustments are not a significant regulatory action and do not need to be reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

These rate adjustments are not a rule for the purposes of the Regulatory Flexibility Act because they establish "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Unfunded Mandates Reform Act of 1995

These rate adjustments do not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $130 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. Therefore, the Department of the Interior (Department) is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et. seq.*).

Takings (Executive Order 12630)

The Department has determined that these rate adjustments do not have significant "takings" implications. The rate adjustments do not deprive the public, state, or local governments of rights or property.

Federalism (Executive Order 13132)

The Department has determined that these rate adjustments do not have significant Federalism effects because they will not affect the States, the relationship between the national government and the States, or the distribution of power and responsibilities among various levels of government.

Civil Justice Reform (Executive Order 12988)

In issuing this rule, the Department has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988.

Paperwork Reduction Act of 1995

These rate adjustments do not affect the collections of information which have been approved by the Office of Information and Regulatory Affairs, Office of Management and Budget, under the Paperwork Reduction Act of 1995. The OMB Control Number is 1076–0141 and expires December 31, 2012.

National Environmental Policy Act

The Department has determined that these rate adjustments do not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370(d)).

Information Quality Act

In developing this notice, we did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Dated: May 17, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–12658 Filed 5–25–10; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2010–N082; 70133–1265–0000–U4]

Yukon Flats National Wildlife Refuge, Fairbanks, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability: record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the record of decision (ROD) for the final environmental impact statement (EIS) for a Proposed Land Exchange in the Yukon Flats National Wildlife Refuge (NWR, Refuge). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final EIS, which we released to the public on March 12, 2010.

DATES: The Regional Director of the Alaska Region, U.S. Fish and Wildlife Service, signed the ROD on April 21, 2010.

ADDRESSES: You may view or obtain copies of the ROD/final EIS on paper or CD–ROM by any of the following methods:

Web Site: Download a copy of the document(s) at *http://yukonflatseis.ensr.com.*

E-mail: yukonflats_planning@fws.gov. Include "Yukon Flats ROD" in the subject line of the message.

Fax: Attn: Laura Greffenius, EIS Project Coordinator, (907) 786–3965.

Mail: Laura Greffenius, EIS Project Coordinator, U.S. Fish and Wildlife Service, 1011 East Tudor Road, MS–231, Anchorage, AK 99503.

In-Person Viewing or Pickup: Call Laura Greffenius, EIS Project Coordinator at (907) 786–3872 to make an appointment during regular business hours at U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Laura Greffenius, EIS Project Coordinator, phone (907) 786–3872.

SUPPLEMENTARY INFORMATION: With this notice, we finalize the EIS process for a Proposed Land Exchange in the Yukon Flats NWR. In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final EIS for a Proposed Land Exchange in the Yukon Flats NWR. We completed a thorough analysis of the environmental, social, and economic considerations, which we included in the final EIS. The ROD documents our selection of the No Land Exchange Alternative (No Action Alternative), the Service's preferred alternative in the final EIS. Under this alternative the Service would not exchange land with Doyon, Limited (Doyon). The No Land Exchange Alternative, as we described in the final EIS/ROD, is the decision to continue to manage lands within the Refuge as they currently are.

Background Information

The Final EIS analyzes the potential direct, indirect, and cumulative impacts associated with the Service's proposed "Agreement in Principle" (Agreement) between the Service and Doyon to exchange and acquire lands within the Refuge. Under the terms of the Agreement, the proposed land exchange involved 110,000 acres of Refuge lands that may hold developable oil and gas reserves, and oil and gas rights to an adjacent 97,000 acres of Refuge lands. Under the Proposed Action, the Refuge would have received a minimum of 150,000 acres of Doyon lands within the Refuge boundaries, and Doyon would have reallocated 56,500 acres of Alaska Native Claims Settlement Act 12(b) land entitlements within the Refuge to lands outside the Refuge.

Alternatives

Alternatives analyzed in the Final EIS included the No Land Exchange (No Action) Alternative, or continuation of present management. The No Action Alternative was the Service's preferred alternative. In addition, three action alternatives were evaluated: (1) The Proposed Action, with land exchanges and acquisitions as described in the Agreement; (2) A Land Exchange with Non-development Easements Alternative, where Doyon would grant non-development easements on 120,000 acres, but would not sell land to the Service; and (3) A Land Exchange Excluding the White-Crazy Mountains Alternative that would exclude from the exchange an area within the Refuge that had been recommended for Wilderness designation.

Among the alternatives evaluated, the No Land Exchange Alternative is the environmentally preferable alternative. It has the least potential for adverse effects to the biological and physical environment of the Refuge, it best protects and preserves the Refuge's resources, and it best supports the purposes for which the Refuge was established.

Public Involvement

Public involvement and comments have been requested, considered, and incorporated throughout the EIS process. The Notice of Intent to prepare an EIS for a proposed land exchange in the Refuge was published in the **Federal Register** on October 19, 2005 (70 FR 60845). The notice of public scoping meetings was published in the **Federal Register** on March 3, 2006 (71 FR 10988). Public scoping meetings were held in local communities within the Refuge and surrounding areas. The Service distributed newsletters with project updates discussing opportunities for public involvement and results of public input. Comments and concerns received during this time were used to identify issues and draft alternatives for evaluation in the Draft EIS.

The Notice of Availability for the Draft EIS was published in the **Federal Register** on January 25, 2008 (73 FR 4617). Public hearings were held in each local community affiliated with the Refuge, plus Fairbanks and Anchorage. From May to July 2008, government-to-government consultations were also held with Tribal Councils who requested them. In response to numerous requests for additional time to review and comment, the comment period was reopened and extended via a **Federal Register** notice published April 18, 2008 (73 FR 20931). We received more than 100,000 comments during the full comment period. The vast majority of comments, including those from several area tribal governments, opposed the proposed exchange. The Responses to Comments are contained in Volume 2 of the Final EIS.

The Notice of Availability for the Final EIS was published in the **Federal Register** on March 12, 2010 (75 FR 11905). Comments from tribal governments, Alaska Native and conservation organizations, and individuals expressed support for the Service's designation of the No Action Alternative as the preferred alternative.

Findings and Basis for Decision

In making its decision, the Service reviewed and carefully considered the impacts identified in the draft and final *Environmental Impact Statement;* relevant issues and concerns; public input received throughout the EIS process, including comments on the draft and final *Environmental Impact Statement;* and other factors including refuge purposes and relevant laws, regulations, and policies. For the following reasons, the Service selected the No Land Exchange Alternative.

First, the Service has a limited understanding of the effects that oil and gas development would have on the hydrology of lands exchanged to Doyon and lands that would be retained by the Service. Second, the exchange would create a private lands corridor that would almost split the Refuge into two parcels, resulting in habitat fragmentation, and that could degrade the biological integrity, diversity, and environmental health of the Refuge. Third, the Service is concerned that the proposed land exchange could magnify projected changes to Refuge resources from climate change. Fourth, infrastructure associated with access corridors from the proposed exchange would increase human use of the Refuge. Fifth, there is concern that the lands proposed for acquisition by the Service are more likely to be adjacent to prospective areas of development (based on revised U.S. Geological Survey oil and gas data). Impacts from adjacent development would make those lands less desirable to the Service. This has cast doubts on the benefits of the exchange to all involved. The adoption of the No Land Exchange Alternative is effective immediately.

Dated: May 19, 2010.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2010–12629 Filed 5–25–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Special Resource Study and Environmental Impact Statement, Coltsville, Hartford, CT

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Termination of the Environmental Impact Statement for the Coltsville Special Resource Study in Hartford, Connecticut.

SUMMARY: As directed by the US Congress in Public Law 108–94, the National Park Service (NPS) undertook a special resource study (SRS) of the Coltsville Historic District in Hartford, Connecticut. In accordance with NPS policy, the Coltsville SRS was initially undertaken as an Environmental Impact Statement (EIS) process in compliance with the National Environmental Policy Act of 1969, as amended (NEPA). A Notice of Intent to Prepare an EIS was published in the **Federal Register** on September 4, 2004. The purpose of an SRS is to determine the degree and kind of federal actions that may be desirable for the management and protection of an area considered to have potential for addition to the national park system. The EIS assesses the impacts of the management alternatives examined in the SRS.

The SRS examines a site in terms of:

- National significance of the resources;
- Determination of suitability of the site for inclusion within the national park system in comparison to other protected sites with similar resources or themes;
- Determination of feasibility for the NPS to own, manage or participate in conservation and interpretation in the study area;
- Need for NPS management measured against other alternatives.

This SRS examined the resources in the existing Coltsville Historic District, which preserves the history of precision manufacturing that developed at the Colt Fire Arms Company. All of the elements of the site are located within the City of Hartford, Connecticut. The study team concluded that the Coltsville Historic District NHL meets the criteria for national significance and suitability; however, the study concluded that the site does not meet the feasibility criterion for potential designation as a unit of the national park system. As a result, there is no need for NPS management and, therefore, no federal actions subject to the requirements of NEPA. Thus, the NEPA process has been terminated.

The Coltsville Special Resource Study is available for public review at: *http://parkplanning.nps.gov/nero.* Public comments were received between November 13 and December 18, 2009. A summary of the public comments is also available at *http://parkplanning.nps.gov/nero.*

FOR FURTHER INFORMATION CONTACT: James O'Connell, Project Manager, National Park Service, Northeast Region, 15 State Street, Boston, MA 02109.

Michael T. Reynolds,

Acting Regional Director, Northeast Region, National Park Service.

[FR Doc. 2010–12604 Filed 5–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on May 17, 2010, a proposed

Consent Decree in *United States* v. *Schurkman, et al.,* Civil Action No. 07–915 (KMK) (LMS), was lodged with the United States District Court for the Southern District of New York.

The proposed Consent Decree resolves claims of the United States, on behalf of the Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.,* and the Federal Debt Collections Procedures Act ("FDCPA"), 28 U.S.C. 3304 and 3306, in connection with the Shenandoah Road Groundwater Contamination Superfund Site (the "Site"), against Steven A. Schurkman, Esq., in his capacity as Trustee of the Jacob Manne Irrevocable Trust ("Schurkman"), and Joseph S. Manne, in his capacity as the representative of the Estate of Jacob Manne. The complaint filed in this action sought reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site, a declaration that the Estate of Jacob Manne is liable for any future response costs incurred by the United States at the Site, and, pursuant to Sections 3304 and 3306 of the FDCPA, an order voiding a transfer of cash and real property from Jacob Manne to the Jacob Manne Irrevocable Trust (the "Trust").

The Consent Decree requires payment to the United States of the appraised value of five parcels of real property in East Fishkill (unrelated to the Site property) (the "Land") that had been in the Estate of Jacob Manne and transferred to the Trust. Specifically, Schurkman will convey the Land held by the Trust to a new corporation, ND–4, LLC. Settling Defendants Dr. Joseph S. Manne (Jacob Manne's son), personally, and as the representative of the Estate of Jacob Manne, and ND–4, LLC, will pay the United States the appraised value of the Land within three years of entry of the Consent Decree, whether the properties are sold within that time frame or not. There are minimal assets in the Estate of Jacob Manne other than the Land.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Schurkman, et al.,* Civil Action No. 07–915 (KMK) (LMS), DJ No. 90–11–3–08989.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of New York, 86 Chambers Street, New York, New York 10007. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $8.50 (25 cent per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–12585 Filed 5–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on May 17, 2010 a Consent Decree in *United States of America and Allegheny County Health Department* v. *Allegheny Ludlum Corporation,* Civil Action No. 10–0673 was lodged with the United States District Court for the Western District of Pennsylvania.

In a complaint that was filed simultaneously with the Consent Decree, the United States and the Allegheny County Health Department ("ACHD") sought injunctive relief and penalties against Allegheny Ludlum Corporation ("ALC") pursuant to Section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged Clean Air Act violations and violations of the Pennsylvania State Implementation Plan at a steel manufacturing facility in Natrona, Pennsylvania owned by ALC.

Under the terms of the settlement, the settling defendant will: (1) Cease operation of the Natrona steel manufacturing facility not later than November 30, 2010; (2) pay a $1.6 million civil penalty for settlement of the claims in the complaint; and (3) apply interim measures to control visible air emissions, until the Natrona facility finally ceases operation.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or submitted via e-mail to *pubcomment-ees.enrd@usdoj.gov,* and should refer to *United States and the Allegheny County Health Department* v. *Allegheny Ludlum Corporation,* D.J. Ref. No. 90–5–2–1–09378/1.

The Consent Decree may be examined at the Offices of the U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov),* fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–12582 Filed 5–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Resource Conservation and Recovery Act

Notice is hereby given that on May 19, 2010, a proposed Consent Decree between the United States of America and Rineco Chemical Industries, Inc. ("Rineco") was lodged with the United States District Court for the Eastern District of Arkansas in the case of *United States* v. *Rineco Chemical Industries, Inc.,* Civil Action No. 4–07–CV–01189SWW.

In December 2007, the United States filed a complaint seeking injunctive relief and civil penalties resulting from

Rineco's failure, *inter alia,* to obtain a permit under the Resource Conservation and Recovery Act ("RCRA") for its ownership and operation of a Thermal Metal Washing unit ("TMW"), in violation of Section 3005(a) of RCRA, 42 U.S.C. 6925(a); and applicable Arkansas Pollution Control and Ecology Commission regulations in connection with Rineco's fuel blending facility located in Benton, Arkansas.

The Consent Decree requires Rineco to apply for a RCRA permit for the TMW and its related hazardous waste storage and control any fugitive emissions from the TMW at the facility; perform trial and risk burns for the TMW to identify appropriate incinerator level and risk based operating and control parameters for the unit; file a notification and description of hazardous waste activity for the TMW; and establish financial assurances for the TMW and its related hazardous waste storage. Rineco will pay a civil penalty of $1,350,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov,* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States et al* v. *Rineco Chemical Industries, Inc.,* D.J. Ref. # 90–7–1–08902.

The Consent Decree may be examined at U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (contact Terry Sykes). During the public comment period, the Consent Decree also may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the U.S. Treasury, or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–12584 Filed 5–25–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Semitropic Water Storage Dist.,* Civil No. 1:10–cv–909–AWI–JLT, was lodged with the United States District Court for the Eastern District of California on May 20, 2010.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Semitropic Water Storage District, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344 to obtain injunctive relief and impose civil penalties against the Defendant for violating the Clean Water Act by discharging fill material into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to pay a civil penalty. In addition, Defendant has agreed to pay a fee in lieu of mitigation of $78,000, for its impacts to waters of the United States. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Sylvia Quast, Assistant United States Attorney, United States Attorney's Office, Eastern District of California, 501 I Street, Suite 10–100, Sacramento, California and refer to *United States* v. *Semitropic Water Storage Dist.,* Civil No. 1:10–cv–909–AWI–JLT.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of California, 501 I Street, 4th Floor, Sacramento, California 95814. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Maureen M. Katz,

Assistant Section Chief, Environment and Natural Resources Division.

[FR Doc. 2010–12637 Filed 5–25–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0030]

Agency Information Collection Activities: Proposed collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a Currently Approved Collection: Capital Punishment Report of Inmates Under Sentence of Death.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 26, 2010. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracy L. Snell, Statistician, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 (phone: 202–616–3288).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.

permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the Form/Collection:* Capital Punishment Report of Inmates Under Sentence of Death.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Numbers:* NPS–8 Report of Inmates Under Sentence of Death; NPS–8A Update Report of Inmates Under Sentence of Death; NPS–8B Status of Death Penalty Statutes—No Statute in Force; and NPS–8C Status of Death Penalty Statutes—Statute in Force. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections and Attorneys General. *Others:* The Federal Bureau of Prisons. Staff responsible for keeping records on inmates under sentence of death in their jurisdiction and in their custody were asked to provide information for each individual under sentence of death for the following categories: Condemned inmates' demographic characteristics, legal status at the time of capital offense, capital offense for which imprisoned, number of death sentences imposed, criminal history information, reason for removal and current status if no longer under sentence of death, method of execution, and cause of death by means other than execution. Personnel in the offices of each Attorney General are asked to provide information regarding the status of death penalty laws and any changes to the laws enacted during the reference year. The Bureau of Justice Statistics uses this information in published reports and in responding to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others interested in criminal justices statistics.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 117 responses at 30 minutes each for the NPS–8; 3,215 responses at 30 minutes for the NPS–8A; and 52 responses at 15 minutes each for the NPS–8B and NPS–8C. In 2009, the 44 NPS–8/8A respondents and 52 NPS–8B/8C respondents have the option to provide responses using either paper or web-based questionnaires. The burden estimate is based on feedback from respondents in the most recent data collection.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,679 annual total burden hours associated with the collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: May 20, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–12598 Filed 5–25–10; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 10, 2010.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/email: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–5806 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register.** In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Reinstatement with change of a previously approved collection.

Title of Collection: Veterans Supplement to the CPS.

OMB Control Number: 1220–0102.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 11,000.

Total Estimated Annual Burden Hours: 367.

Total Estimated Annual Costs Burden (Operation and Maintenance): $0.

Description: This supplement is co-sponsored by the U.S. Department of Veterans Affairs and by the U.S. Department of Labor's Veterans Employment and Training Service. Data collected through this supplement will be used by the co-sponsors to determine policies that better meet the needs of our Nation's veteran population. The supplement provides information on the labor force status of veterans with a service-connected disability, combat veterans, past or present National Guard and Reserve members, and recently discharged veterans. The supplement also provides information about veterans' participation in various transition and employment training programs. Respondents are veterans who are not currently on active duty or are members of a household where a veteran lives. For additional information, see related notice published in the **Federal Register** on February 2, 2010 (Vol. 75, page 5346).

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. 2010–12641 Filed 5–25–10; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0185]

Notice of Availability of Revised Model Proposed No Significant Hazards Consideration Determination for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Availability.

SUMMARY: The Notice of Availability (NOA) for adoption of TSTF–475, Revision 1, using the Consolidated Line Item Improvement Process (CLIIP), was published in the **Federal Register** on November 13, 2007 (72 FR 63935). The prior NOA followed the CLIIP and contained a model safety evaluation, a model license amendment application, and a model proposed no significant hazards consideration determination (NSHCD). The purpose of this NOA is to revise the model proposed NSHCD. Technical Specifications Task Force (TSTF) Traveler TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action," is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML071420428.

Documents: You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and for a fee have copied publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Barry W. Miller, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12 D3, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–4117 or e-mail at *Barry.Miller@nrc.gov*.

Dated at Rockville, Maryland, this 17th day of May 2010.

For the Nuclear Regulatory Commission.

Michael D. McCoppin,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

Revised Model Proposed No Significant Hazards Consideration Determination for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action"

Description of amendment request: [(1) The proposed amendment would change the frequency of control rod notch testing, as specified in technical specification (TS) surveillance requirement (SR) [3.1.3.2], from at least once per 7 days to at least once per 31 days. The purpose of this SR is to confirm control rod insertion capability which is demonstrated by inserting each partially or fully withdrawn control rod at least one notch and observing that the control rod moves. This ensures that the control rod is not stuck and is free to insert on a scram signal. (2) The proposed amendment would add the word "fully" to the Action for TS Limiting Condition for Operation (LCO) [3.3.1.2] Required Action E.2 to clarify the requirement to insert fully all insertable control rods in core cells containing one or more fuel assemblies when the required source range monitor (SRM) instrumentation is inoperable. (3)] The proposed amendment would revise Example 1.4–3 in Section 1.4 "Frequency" to clarify that the 1.25 surveillance test interval extension in SR [3.0.2] is applicable to time periods discussed in NOTES in the "SURVEILLANCE" column in addition to the time periods in the "FREQUENCY" column. The licensee stated that the proposed amendment is based on Nuclear Regulatory Commission (NRC)-approved Technical Specifications Task Force (TSTF) change Traveler TSTF–475, Revision 1, "Control Rod Notch Testing Frequency and SRM Insert Control Rod Action." The availability of this change to the Standard Technical Specifications (STS) was announced in the **Federal Register** on November 13, 2007 (72 FR 63935), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below.

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to SR [3.1.3.2] reduces the frequency of control rod notch testing. Changing the frequency of testing is not expected to have any significant impact on the reliability of the control rods to insert as required on a scram signal. The proposed change to the Required Action E.2 for LCO [3.3.1.2] merely clarifies the intent of the action. The proposed change to revise Example 1.4–3 in Section 1.4 "Frequency" clarifies the applicability of the 1.25 surveillance test interval extension. There are no physical plant modifications associated with this change. The proposed amendment would not alter the way any structure, system, or component (SSC) functions and would not alter the way the plant is operated. As such, the proposed amendment would have no impact on the ability of the affected SSCs to either preclude or mitigate an accident. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment would not change the design function or operation of the SSCs involved and would not impact the way the plant is operated. As such, the proposed change would not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is associated with the confidence in the ability of the fission product barriers (*i.e.,* fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical plant modifications associated with the proposed amendment. The proposed amendment would not alter the way any SSC functions and would not alter the way the plant is operated. The proposed amendment would not introduce any new uncertainties or change any existing uncertainties associated with any safety limit. The proposed amendment would have no impact on the structural integrity of the fuel cladding, reactor coolant pressure boundary, or containment structure. Based on the above considerations, the NRC staff concludes that the proposed amendment would not degrade the confidence in the ability of the fission product barriers to limit the level of radiation to the public. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied and the requested amendment involves no significant hazards consideration.

[FR Doc. 2010–12708 Filed 5–25–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0186]

Notice of Availability of the Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–501, Revision 1, "Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control"

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of availability.

SUMMARY: As part of the consolidated line item improvement process (CLIIP), the NRC is announcing the availability of the enclosed model application (with model no significant hazards consideration determination) and model safety evaluation (SE) for the plant-specific adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–501, Revision 1, "Relocate Stored Fuel Oil and Lube Oil Volume Values to Licensee Control." TSTF–501, Revision 1, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML090510686. The proposed changes would revise Technical Specifications (TS) 3.8.3, "Diesel Fuel Oil, Lube Oil, and Starting Air," by relocating the current stored diesel fuel oil and lube oil numerical volume requirements from the TS to the TS Bases so that it may be modified under licensee control. This CLIIP model SE will facilitate expedited approval of plant-specific adoption of TSTF–501, Revision 1.

Documents: You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

The model application (with model no significant hazards consideration determination) and model SE for the plant-specific adoption of TSTF–501, Revision 1, are available electronically under ADAMS Package Accession Number ML100850069. The NRC staff disposition of comments received to the Notice of Opportunity for Comment announced in the **Federal Register** on August 20, 2009 (74 FR 42131–42138), is available electronically under ADAMS Accession Number ML100920563.

FOR FURTHER INFORMATION CONTACT: Barry W. Miller, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–4117 or e-mail at *Barry.Miller@nrc.gov.*

SUPPLEMENTARY INFORMATION: TSTF–501, Revision 1, is applicable to all nuclear power reactors. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's model SE, referencing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process each amendment application responding to this notice of availability according to applicable NRC rules and procedures.

The model does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–501, Revision 1. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review and would not be reviewed as a part of the CLIIP. This may increase the time and resources needed for the review or result in NRC staff rejection of the license amendment request (LAR). Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–501, Revision 1.

The NRC staff requests that each licensee applying for the changes proposed in TSTF–501, Revision 1, include their current licensing basis for fuel and lube oil storage requirements in their LAR.

Dated at Rockville, Maryland, this 14th day of May 2010.

For the Nuclear Regulatory Commission.

Michael D. McCoppin,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–12716 Filed 5–25–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0184]

Office of New Reactors: Proposed NUREG–0800; Standard Review Plan Section 13.6.6, Draft Revision 0 on Cyber Security Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC staff is soliciting public comment on NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants," on a proposed Standard Review Plan (SRP) Section 13.6.6 on "Cyber Security Plan" (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093560837). The Office of Nuclear Security and Incident Response is issuing the SRP Section 13.6.6 (Enclosure 1) for the purpose of soliciting comments from the entities that we understand have a need to comment on the proposed draft guidance.

The NRC staff issues notices to facilitate timely implementation of the current staff guidance, to facilitate activities associated with the review of amendment applications, and to facilitate activities associated with review of applications for design certification and combined license by the Office of New Reactors. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 13.6.6 and Regulatory Guide 1.206, "Combined License Applications for Nuclear Power Plants (LWR Edition)," June 2007.

DATES: Comments must be filed no later than 30 days from the date of publication of this notice in the **Federal Register**. Comments received after this date will be considered practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2010–

0184 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site at *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0184. Address questions about NRC dockets to Carol Gallagher at 301–492–3668; e-mail at *Carol.Gallagher@nrc.gov.*

Mail comments to: Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2010–0184.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by e-mail at *pdr.resources@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. William F. Burton, Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone at 301–415–6332 or e-mail at *william.burton@nrc.gov.*

The NRC staff is issuing this notice of the proposed SRP Section 13.6.6, Draft Revision 0 to solicit comments from the entities that we understand have a need to comment on the proposed draft guidance. After the NRC staff considers any comments, it will make a determination regarding the proposed SRP Section 13.6.6.

Dated at Rockville, Maryland, this 13th day of May 2010.

For the Nuclear Regulatory Commission.

William F. Burton,

Chief, Rulemaking and Guidance Development Branch, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2010–12713 Filed 5–25–10; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Termination of Single-Employer Plans, Missing Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval.

SUMMARY: Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval (with modifications), under the Paperwork Reduction Act of 1995, of a collection of information in its regulations on Termination of Single-Employer Plans and Missing Participants, and implementing forms and instructions (OMB control number 1212–0036; expires September 30, 2010). This notice informs the public of PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 26, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *E-mail: paperwork.comments@pbgc.gov.*
- *Fax:* 202–326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

PBGC will make all comments available on its Web site at *http://www.pbgc.gov.*

Copies of the collection of information may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulations and forms and instructions relating to this collection of information are available on PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed, the plan administrator is subject to the requirements of ERISA section 4050 and PBGC's regulation on missing participants (29 CFR part 4050). PBGC is making clarifying, simplifying, editorial, and other changes to the existing forms and instructions.

PBGC estimates that 1,381 plan administrators will be subject to the collection of information requirements in PBGC's regulations on termination and missing participants and implementing forms and instructions each year, and that the total annual burden of complying with these

requirements is 2,329 hours and $3,333,991. (Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements.)

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC, this 20th day of May, 2010.

John H. Hanley,

Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.

[FR Doc. 2010–12600 Filed 5–25–10; 8:45 am]

BILLING CODE 7709–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12132 and #12133]

Minnesota Disaster Number MN–00024

AGENCY: Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1900–DR), dated 04/19/2010.

Incident: Flooding.

Incident Period: 03/01/2010 through 04/26/2010.

DATES: *Effective Date:* 05/19/2010.

Physical Loan Application Deadline Date: 06/18/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/19/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 04/19/2010, is hereby amended to establish the incident period for this disaster as beginning 03/01/2010 and continuing through 04/26/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–12586 Filed 5–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12142 and #12143]

Connecticut Disaster Number CT–00015

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–1904–DR), dated 04/23/2010.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2010 through 05/17/2010.

DATES: *Effective Date:* 05/17/2010.

Physical Loan Application Deadline Date: 06/22/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 01/24/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Connecticut, dated 04/23/2010, is hereby amended to establish the incident period for this disaster as beginning 03/12/2010 and continuing through 05/17/2010.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–12593 Filed 5–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12159 and #12160]

Tennessee Disaster Number TN–00039

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1909–DR, dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-line Winds, and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/19/2010.

Physical Loan Application Deadline Date: 07/06/2010.

EIDL Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Tennessee, dated 05/04/2010 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Cannon, Giles, Marshall.

Contiguous Counties: (Economic Injury Loans Only):

Alabama: Limestone.

Tennessee: Lincoln.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–12590 Filed 5–25–10; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12161 and #12162]

Tennessee Disaster Number TN–00038

AGENCY: Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1909–DR), dated 05/04/2010.

Incident: Severe Storms, Flooding, Straight-Line Winds and Tornadoes.

Incident Period: 04/30/2010 and continuing.

DATES: *Effective Date:* 05/19/2010.

Physical Loan Application Deadline Date: 07/06/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 02/04/2011.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TENNESSEE, dated 05/04/2010, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Benton, Cannon, Giles, Marshall, Pickett, Sumner.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2010–12589 Filed 5–25–10; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 15a–4; SEC File No. 270–7; OMB Control No. 3235–0010]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 15a–4, SEC File No. 270–7, OMB Control No. 3235–0010.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 15a–4 (17 CFR 240.15a–4) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et. seq.*) (the "Exchange Act") permits a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to continue to transact business on the exchange while the Commission reviews his or her application for registration as a broker-dealer if the exchange files a statement indicating that there does not appear to be any ground for disapproving the application. The total annual burden imposed by Rule 15a–4 is approximately 42 hours, based on approximately 10 responses (10 Respondents × 1 Response/Respondent), each requiring approximately 4.23 hours to complete.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers, municipal securities dealers and government securities broker-dealers, and where the Commission, other regulators and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, municipal securities dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

The statement submitted by the exchange assures the Commission that the applicant, in the opinion of the exchange, is qualified to transact business on the exchange during the time that the applications are reviewed.

Completing and filing Form BD is mandatory in order for a natural person member of a securities exchange who terminates his or her association with a registered broker-dealer to obtain the 45-day extension under Rule 15a–4. Compliance with Rule 15a–4 does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments should be directed to (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 19, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12555 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Notice of Exempt; OMB Control No. 3235–0452; SEC File No. 270–396; Preliminary Roll-Up Communication]

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Notice of Exempt, OMB Control No. 3235–0452, SEC File No. 270–396, Preliminary Roll-Up Communication.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

A Notice of Exempt Preliminary Roll-Up Communication ("Notice") (17 CFR 240.14a–104) provides information regarding ownership interests and any potential conflicts of interest to be included in statements submitted by or on behalf of a person pursuant Exchange Act Rule (17 CFR 240.14a–2(b)(4)) and Exchange Act Rule (17 CFR 240.14a–6(n)). The Notice is filed on occasion and the information required is

mandatory. All information is provided to the public upon request. The Notice takes approximately 0.25 hours per response and is filed by 4 respondents for a total of one annual burden hour.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 19, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12554 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62135; File No. SR–NASDAQ–2010–060]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Require Companies To Provide Notification to Nasdaq of Any Noncompliance With the Corporate Governance Requirements

May 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to require companies to provide notification to Nasdaq of any noncompliance with the corporate governance requirements. Nasdaq will implement the proposed rule change thirty days after the date of the filing. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

* * * * *

5250. Obligations for Companies Listed on The Nasdaq Stock Market

(a) Obligation to Provide Information to Nasdaq

(1) Nasdaq may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a Company's continued listing, including, but not limited to, any material provided to or received from the Commission or Other Regulatory Authority. A Company may be denied continued listing if it fails to provide such information within a reasonable period of time or if any communication to Nasdaq contains a material misrepresentation or omits material information necessary to make the communication to Nasdaq not misleading. The Company shall provide full and prompt responses to requests by Nasdaq or by FINRA acting on behalf of Nasdaq for information related to unusual market activity or to events that may have a material impact on trading of its securities in Nasdaq.

[(1)] *(2)* As set forth in Rule 5625, a Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any [material] noncompliance by the Company with the requirements of the Rule 5600 Series.

(b)–(f) No change.

* * * * *

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(a) Exemptions to the Corporate Governance Requirements

(1) No change

IM–5615–1. No change.

(2) No change.

IM–5615–2. No change.

(3) Foreign Private Issuers

(A) A Foreign Private Issuer may follow its home country practice in lieu of the requirements of the Rule 5600 Series, the requirement to distribute annual and interim reports set forth in Rule 5250(d), and the Direct Registration Program requirement set forth in Rules 5210(c) and 5255, provided, however, that such a Company shall: Comply with the Notification of [Material] Noncompliance requirement (Rule 5625), the Voting Rights requirement (Rule 5640), have an audit committee that satisfies Rule 5605(c)(3), and ensure that such audit committee's members meet the independence requirement in Rule 5605(c)(2)(A)(ii). Except as provided in this paragraph, a Foreign Private Issuer must comply with the requirements of the Rule 5000 Series.

(B) No change

IM–5615–3. Foreign Private Issuers

A Foreign Private Issuer (as defined in Rule 5005) listed on Nasdaq may follow the practice in such Company's home country (as defined in General Instruction F of Form 20–F) in lieu of the provisions of the Rule 5600 Series, Rule 5250(d), and Rules 5210(c) and 5255, subject to several important exceptions. First, such an issuer shall comply with Rule 5625 (Notification of [Material] Noncompliance). Second, such a Company shall have an audit committee that satisfies Rule 5605(c)(3). Third, members of such audit committee shall meet the criteria for independence referenced in Rule 5605(c)(2)(A)(ii) (the criteria set forth in Rule 10A–3(b)(1) under the Act, subject to the exemptions provided in Rule 10A–3(c) under the Act). Fourth, a Foreign Private Issuer must comply with Rules 5210(c) and 5255 (Direct Registration Program) unless prohibited from complying by a law or regulation in its home country. Finally, a Foreign Private Issuer that elects to follow home country practice in lieu of a requirement of Rules 5600, 5250(d), 5210(c) or 5255 shall submit to Nasdaq a written statement from an independent counsel in such Company's home country

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

certifying that the Company's practices are not prohibited by the home country's laws and, in the case of a Company prohibited from complying with Rules 5210(c) and 5255, certifying that a law or regulation in the home country prohibits such compliance. In the case of new listings, this certification is required at the time of listing. For existing Companies, the certification is required at the time the Company seeks to adopt its first noncompliant practice. In the interest of transparency, the rule requires a Foreign Private Issuer to make appropriate disclosures in the Company's annual filings with the Commission (typically Form 20–F or 40–F), and at the time of the Company's original listing in the United States, if that listing is on Nasdaq, in its registration statement (typically Form F–1, 20–F, or 40–F); alternatively, a Company that is not required to file an annual report on Form 20–F may provide these disclosures in English on its website in addition to, or instead of, providing these disclosures on its registration statement or annual report. The Company shall disclose each requirement that it does not follow and include a brief statement of the home country practice the Company follows in lieu of these corporate governance requirement(s). If the disclosure is only available on the website, the annual report and registration statement should so state and provide the web address at which the information may be obtained. Companies that must file annual reports on Form 20–F are encouraged to provide these disclosures on their Web sites, in addition to the required Form 20–F disclosures, to provide maximum transparency about their practices.

(4) Limited Partnerships

(A)–(I) No change.

(J) Notification of [Material] Noncompliance.

Each Company that is a limited partnership must provide Nasdaq with prompt notification after an Executive Officer of the Company, or a person performing an equivalent role, becomes aware of any [material] noncompliance by the Company with the requirements of this Rule 5600 Series.

(5) No change.

IM–5615–4. No change.

(b)–(c) No change.

IM–5615–5. No change.

* * * * *

5625. Notification of [Material] Noncompliance

A Company must provide Nasdaq with prompt notification after an Executive Officer of the Company becomes aware of any [material] noncompliance by the Company with the requirements of this Rule 5600 Series.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq rules require that a listed company notify Nasdaq when an executive officer of the company becomes aware of any material noncompliance with Nasdaq's corporate governance requirements contained in the Rule 5600 Series.[5] Nasdaq has consistently interpreted this requirement such that any noncompliance with these rules would be considered material and now proposes to modify the rule to make this clear by requiring notification of any noncompliance. When Nasdaq receives notice of noncompliance, it will review the matter in accordance with the Rule 5800 Series, which provides the procedures applicable when a company fails to meet a listing standard, and provide appropriate notice on www.nasdaq.com.[6]

Nasdaq also proposes to make conforming changes to Rule 5615(a)(3) and IM–5615–3, which, among other things, require a foreign private issuer to provide notice of noncompliance, and to Rule 5250, which cross references the requirement to provide notice of noncompliance.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general and with Section 6(b)(5) of the Act,[8] in particular, which requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The proposed rule change is consistent with these requirements in that it will assure that Nasdaq receives notice of any noncompliance with the corporate governance requirements, thereby helping to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[9]

The proposed rule change will clarify the notice required from listed companies regarding noncompliance

[5] Rule 5615(a)(4)(J) imposes this requirement on limited partnerships and Rule 5625 imposes this requirement on all other listed entities.

[6] Nasdaq also monitors public filings made by listed companies and will review any noncompliance it discovers in the same manner.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] The Commission notes that Nasdaq has satisfied the pre-filing requirement.

with the corporate governance requirements, consistent with Nasdaq's historical interpretation of that requirement, and is closely modeled after similar rules of another national securities exchange.[10] Therefore Nasdaq believes it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–060 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–060 and should be submitted on or before June 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12551 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

[10] Section 303A.12(b) of the NYSE Listed Company Manual requires a listed company's CEO to "promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any non-compliance with any applicable provisions of this Section 303A."

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62134; File No. SR–FINRA–2010–022]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the Codes of Arbitration Procedure to Increase the Number of Arbitrators on Lists Generated by the Neutral List Selection System

May 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 194 thereunder,[2] notice is hereby given that on April 29, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rules 12403 and 12404 of the Code of Arbitration Procedure for Customer Disputes ("Customer Code") and Rules 13403 and 13404 of the Code of Arbitration Procedure for Industry Disputes ("Industry Code") to increase the number of arbitrators on each list generated by the Neutral List Selection System ("NLSS").

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NLSS is a computer system that generates, on a random basis, lists of arbitrators from FINRA's rosters of arbitrators (*i.e.,* public, non-public, and chair rosters) for each arbitration case. The parties select their panel through a process of striking and ranking the arbitrators on the lists.

Currently, parties are sent lists of available arbitrators, along with detailed biographical information on each arbitrator. In a three-arbitrator case, other than one involving a dispute among members, the parties receive three lists of eight arbitrators each—one public, one chair-qualified and one non-public. Each party is permitted to strike up to four of the eight names on each list and ranks the remaining names in order of preference. FINRA appoints the panel from among the names remaining on the lists that the parties return.[3]

When there are no names remaining on a list, or when a mutually acceptable arbitrator is unable to serve, a random

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In an arbitration between members, the panel consists of non-public arbitrators, and so the parties receive a list of 16 arbitrators from the FINRA non-public roster, and a list of eight non-public arbitrators from the FINRA non-public chairperson roster. *See* FINRA Rules 13402 and 13403. Each separately represented party may strike up to eight of the arbitrators from the non-public list and up to four of the arbitrators from the non-public chairperson list. *See* FINRA Rule 13404.

selection is made to "extend the list" by generating names of additional arbitrators to complete the panel. Parties may not strike the arbitrators on the extended lists, but they may challenge an arbitrator for cause (*e.g.,* on the basis of conflict of interest).

Prior to 2007, FINRA permitted parties unlimited strikes of proposed arbitrators on lists. This often resulted in parties collectively striking all of the arbitrators on each list generated through NLSS. When this occurred, staff would use NLSS to "extend the list" by generating names of additional arbitrators to complete the panel.

Parties expressed concern about extended list arbitrator appointments because they could not strike arbitrators from an extended list. In response to this concern, in 2007, FINRA changed the arbitrator appointment process through a rule change that limited the number of strikes each party may exercise to four, in an effort to reduce the frequency of extended list appointments.[4] Under the current rule, FINRA permits each party to strike up to four arbitrators from each list of eight arbitrators generated through NLSS and up to eight arbitrators from each list of 16 arbitrators generated through NLSS. The rules limiting strikes have significantly reduced extended lists and thus increased the percentage of cases in which FINRA initially appoints arbitrators from the parties' ranking lists. However, after each side exercises its strikes, typically only one or two persons remain eligible to serve on the case. Therefore, when FINRA grants a challenge for cause or an arbitrator withdraws, FINRA often must appoint the replacement arbitrator using an extended list. Forum users, including both investor and industry parties, continue to express concerns about extended list appointments.[5]

As a result of these concerns, FINRA is proposing to amend Rule 12403 of the Customer Code to expand the number of arbitrators on each list (public, non-public, and public chairperson) generated through NLSS from eight arbitrators to 10 arbitrators. Thus, in every two party case, at least two arbitrators would remain on each list after strikes.[6] The additional number of arbitrators will increase the likelihood that the parties will get panelists they chose and ranked, even when FINRA must appoint a replacement arbitrator. In cases with more than two parties, expanding the lists from eight to 10 arbitrators should significantly reduce the number of arbitrator appointments needed from extended lists.[7]

FINRA is also proposing to amend Rule 13403 of the Industry Code to expand the number of arbitrators on lists generated through NLSS.[8] For disputes between members, FINRA would expand the number of arbitrators on the non-public chairperson list generated through NLSS from eight arbitrators to 10 arbitrators and the number of arbitrators on the non-public list from 16 arbitrators to 20 arbitrators. For disputes between associated persons, or between or among members and associated persons, FINRA would expand the number of arbitrators on each list (public, non-public, and public chairperson) generated through NLSS from eight arbitrators to 10 arbitrators.

FINRA considered whether increasing each list of arbitrators would be unduly burdensome for parties since parties would be reviewing the backgrounds of additional arbitrators during the ranking and striking stage of the arbitrator appointment process. In instances where FINRA appoints arbitrators by extended lists, parties still need to review arbitrators' backgrounds to determine, for example, whether to challenge an extended list arbitrator for cause.

FINRA staff discussed expanding the lists with both investor and industry representatives, and asked the representatives to address the potential burden of reviewing additional arbitrators. The representatives uniformly stated that they would prefer to review additional arbitrators at the ranking and striking stage of the arbitrator appointment process in order to reduce the incidences of extended list appointments.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Forum users have criticized extended list appointments and asked FINRA to reduce the number of arbitrators appointed in this way. Expanding the number of arbitrators on lists generated through NLSS would reduce extended list appointments and would provide parties with more control in the arbitrator selection process because of the increased likelihood that arbitrators from each initial list would remain on the list after the parties complete the striking and ranking process. The proposal would enhance investor and industry participants' satisfaction with the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[4] Exchange Act Release No. 55158 (January 24, 2007), 72 FR 4574 (January 31, 2007) (File No. SR–NASD–2003–158).

[5] The rationale for the proposed rule change was confirmed in a phone conversation between Margo Hassan, FINRA Dispute Resolution, and Joanne Rutkowski, Division of Trading and Markets, Commission, May 18, 2010.

[6] FINRA is not proposing to expand the number of allowable strikes for each party.

[7] Under the rules, each *separately* represented party is entitled to strike four arbitrators from an eight arbitrator list. If, for example, a case involves a customer, a member and an associated person, and each party is separately represented, even with 10 arbitrators there is a chance that all of the arbitrators will be stricken from the list.

[8] Again, FINRA is not proposing to expand the number of allowable strikes for each party.

[9] 15 U.S.C. 78*o*–3(b)(6).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–022 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–022 and should be submitted on or before June 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12625 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62138; File No. SR–NASDAQ–2010–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

May 19, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 14, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on May 17, 2010. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify its fees for orders that execute at prices below $1. Currently, NASDAQ charges 0.2% (20 basis points) of the total dollar value of the execution to members accessing liquidity; provides a rebate of 0.1% (10 basis points) of the total dollar value to members providing liquidity; and charges a fee for routing of 0.3% (30 basis points) of the total dollar value. Through this filing, NASDAQ will modify the rebate paid to members providing liquidity. Specifically, the rebate will be $0.00009 per share executed for securities priced at $0.05 or more but less than $1, and there will be no rebate for securities priced at less than $0.05. Depending upon the price of the stock, the change will result in a decrease in the rebate in most cases but an increase in some cases. The change is designed to provide a constant per share rebate and to result in a closer alignment between the size of the rebate and the average quoted spread for securities trading below $1.[5]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The impact of the price changes upon the net fees paid by a particular market participant will depend upon a number of variables, including the relative availability of liquidity on NASDAQ and other venues, the prices of the market participant's quotes and orders relative to the national best bid and offer (*i.e.,* its propensity to add or remove liquidity), and the types and prices of the securities that it trades. NASDAQ believes that the proposed changes are reasonable and equitable in that they

[5] The change is similar to changes recently made to the rebates offered by other trading venues. *See* Securities Exchange Act Release No. 62050 (May 6, 2010), 75 FR 27029 (May 13, 2010) (SR–ISE–2010–37); Securities Exchange Act Release No. 62051 (May 6, 2010), 75 FR 27034 (May 13, 2010) (SR–ISE–2010–38); Securities Exchange Act Release No. 61996 (April 28, 2010), 75 FR 23829 (May 4, 2010) (SR–NSX–2010–04).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

apply uniformly to all similarly situated members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution and routing is extremely competitive, members may readily direct orders to NASDAQ's competitors if they object to the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–059. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–059, and should be submitted on or before June 16, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12552 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(a)(ii). [sic]

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62139; File No. SR–CBOE–2010–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade CBOE Gold ETF Volatility Index Options

May 19, 2010.

I. Introduction

On March 18, 2010, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade options on the CBOE Gold ETF Volatility Index ("GVZ"). On March 22, 2010, CBOE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on April 14, 2010.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description

CBOE proposes to amend certain of its rules to allow the listing and trading of cash-settled, European-style options on GVZ.

Index Design and Calculation

The calculation of GVZ is based on the VIX methodology applied to options on the SPDR Gold Trust ("GLD"). GVZ is an up-to-the-minute market estimate of the expected volatility of GLD calculated by using real-time bid/ask quotes of CBOE listed GLD options. GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. To compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options, using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.

CBOE will compute values for GVZ underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (CT). GVZ levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, CBOE made technical corrections to the rule text.

[4] *See* Securities Exchange Act Release No. 61859 (April 7, 2010), 75 FR 19439.

Options Trading

Options on GVZ ("GVZ Options") will be quoted in index points and fractions, and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10.00).

The Exchange is proposing to permit 1 point or greater strike price intervals on GVZ Options. Initially, the Exchange will list in-, at- and out-of-the-money strike prices and may open for trading up to five series above and five series below the price of the calculated forward value of GVZ, and LEAPS series. As for additional series, either in response to customer demand or as the calculated forward value of GVZ moves from the initial exercise prices of option series that have been open for trading, the Exchange may open for trading up to five series above and five series below the calculated forward value of GVZ, and LEAPS series. The Exchange will not open for trading series with 1 point strike price intervals within 0.50 point of an existing 2.5 point strike price with the same expiration month. The Exchange will not list LEAPS on GVZ Options at strike price intervals less than 1 point.

Exercise and Settlement

The proposed options will typically expire on the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index). If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be thirty days prior to the CBOE business day immediately preceding that Friday. Trading in the expiring contract month will normally cease at 3 p.m. (CT) on the business day immediately preceding the expiration date. Exercise will result in delivery of cash on the business day following expiration. GVZ Options will be A.M.-settled. The exercise settlement value will be determined by a Special Opening Quotation ("SOQ") of GVZ calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there is no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

Position and Exercise Limits

For regular options trading, the Exchange is proposing to establish position limits for GVZ Options at 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month. Positions in Short Term Option Series, Quarterly Options Series, and Delayed Start Option Series would be aggregated with positions in options contracts in the same GVZ class. Exercise limits would be the equivalent to the proposed position limits.[5] GVZ Options would be subject to the same reporting requirements triggered for other options dealt in on the Exchange.[6]

For FLEX Options trading, the Exchange proposes that the position limits for FLEX GVZ Options will be equal to the position limits for Non-FLEX GVZ Options established pursuant to Rule 24.4. Similarly, the Exchange is proposing that the exercise limits for FLEX GVZ Options will be equivalent to the position limits established pursuant to Rule 24.4. The proposed position and exercise limits for FLEX GVZ Options are consistent with the treatment of position and exercise limits for other FLEX Index Options. The Exchange is also proposing to provide that as long as the options positions remain open, positions in FLEX GVZ Options that expire on the same day as Non-FLEX GVZ Options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX GVZ Options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A and 24.4B, and the exercise limits set forth in Rules 4.12 and 24.5.

Exchange Rules Applicable

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to GVZ Options.

The Exchange is proposing that the margin requirements for GVZ Options be set at the same levels that apply to equity options under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange proposes to designate GVZ Options as eligible for trading as flexible exchange options ("GVZ FLEX Options") as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). GVZ FLEX Options will only expire on business days that non-FLEX options on Volatility Indexes expire. As is described earlier, the Exchange is proposing to amend Rule 24.9(a)(5) to provide that the exercise settlement value of GVZ Options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which GVZ Options expire.

Capacity

CBOE represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of GVZ Options.

Surveillance

The Exchange proposes to use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in GVZ Options. The Exchange represents that these surveillance procedures shall be adequate to monitor trading in options on these volatility indexes. For surveillance purposes, the Exchange states that it will have complete access to information regarding trading activity in the pertinent underlying securities.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. In accordance with the Memorandum of Understanding entered into between the Commodity Futures

[5] *See* Rule 24.5, *Exercise Limits,* which provides that exercise limits are equivalent to position limits.

[6] *See* Rule 4.13, *Reports Related to Position Limits.*

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

Trading Commission ("CFTC") and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As a national securities exchange, the CBOE is required under Section 6(b)(1) of the Act[9] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade GVZ Options will also be subject to best execution obligations and FINRA rules.[10] Applicable exchange rules also require that customers receive appropriate disclosure before trading GVZ Options.[11] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[12]

GVZ Options will trade as options under the trading rules of the CBOE.[13] The Commission believes that the listing rules proposed by CBOE for GVZ Options are consistent with the Act. One point or greater strike price intervals for GVZ Options should provide investors with greater flexibility in the trading of GVZ Options and further the public interest by allowing investors to establish positions that are better tailored to meet their investment objectives.

The Commission notes that CBOE will compute values for GVZ underlying option series on a real-time basis throughout each trading day, and that GVZ levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

The Commission believes that the Exchange's proposed position limits and exercise limits for GVZ Options are appropriate and consistent with the Act. The Commission notes that GLD options comprising the underlying components of GVZ rank among the most actively traded options classes. Specifically, the Exchange has represented that in 2009, GLD ranked as the thirteenth most actively traded option class industry-wide, averaging 136,000 contracts per day, and the twelfth most actively traded options class on CBOE, averaging over 50,000 contracts per day. In addition, the Commission notes that the position and exercise limits for FLEX GVZ Options will be equal to the position and exercise limits for non-FLEX GVZ Options. Further, positions in FLEX GVZ Options that expire on the same day as non-FLEX GVZ Options will be aggregated with positions in Non-FLEX GVZ Options.

The Commission also notes that the margin requirements for equity options will also apply to options on GVZ. The Commission finds this to be reasonable and consistent with the Act.

The Commission also believes that the Exchange's proposal to allow GVZ Options to be eligible for trading as FLEX Options is consistent with the Act. The Commission previously approved rules relating to the listing and trading of FLEX Options on CBOE, which give investors and other market participants the ability to individually tailor, within specified limits, certain terms of those options.[14] The current proposal incorporates GVZ Options that trade as FLEX Options into these existing rules and regulatory framework.

The Commission notes that CBOE represented that it has an adequate surveillance program to monitor trading of GVZ Options and intends to apply its existing surveillance program to support the trading of these options. Finally, the proposed rule change, the Commission has also relied upon the Exchange's representation that it has the necessary systems capacity to support new options series that will result from this proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CBOE–2010–018), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–12553 Filed 5–25–10; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78f(b)(1).

[10] *See* NASD Rule 2320.

[11] *See* CBOE Rule 9.15.

[12] *See* FINRA Rule 2360(b) and CBOE Rules 9.7 and 9.9.

[13] *See, also,* discussion of listing and trading rules for GLD options. (Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–Amex–2008–15; SR–CBOE–2005–11; SR–ISE–2008–12; SR–NYSEArca–2008–52; and SR–Phlx–2008–17) (order approving the listing and trading of options on GLD).

[14] *See* Securities Exchange Act Release No. 31910 (February 23, 1993), 58 FR 12056 (March 2, 1993).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law (Pub. L.) 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes an extension of an OMB-approved information collection.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, e-mail, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Director to the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, E-mail address: *OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCBFM, Attn: Director, Center for Reports Clearance, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–0454, E-mail address: *OPLM.RCO@ssa.gov.*

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than July 26, 2010. Individuals can obtain copies of the collection instrument by calling the SSA Director for Reports Clearance at 410–965–0454 or by writing to the above e-mail address.

Registration for Appointed Representative Services and Direct Payment—0960–0732. SSA uses Form SSA–1699 to register appointed representatives of claimants before SSA who:

- Want to register for direct payment of fees;
- Registered for direct payment of fees prior to 10/31/09, but need to update their information;
- Registered as appointed representatives on or after 10/31/09, but need to update their information; or
- Received a notice from SSA instructing them to complete this form.

SSA will use the SSA–1699 to: (1) Authenticate and authorize appointed

representatives; (2) allow them to access our records for the claimants they represent; (3) facilitate direct payment of authorized fees to him/her; and (4) collect the information we will need to meet Internal Revenue Service (IRS) requirements. SSA will issue specific IRS forms if we pay an appointed representative in excess of $600.

In February 2010, we received emergency clearance for a new, simplified version of this form. We are now seeking full clearance for this simplified version. The respondents are appointed representatives who want to use Form SSA–1699 for any of the purposes cited in this Notice.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 52,800.

Frequency of Response: 1.

Average Burden per Response: 20 minutes.

Estimated Annual Burden: 17,600 hours.

Dated: May 12, 2010.

Faye I. Lipsky,

Center for Reports Clearance, Social Security Administration.

[FR Doc. 2010–12631 Filed 5–25–10; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2010–0022]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of upcoming quarterly panel meeting.

DATES: June 9, 2010, 1 p.m.—5 p.m. (CST); June 10, 2010, 8:30 a.m.–11:30 a.m. (CST).

Location: Doubletree Hotel Memphis Downtown.

ADDRESSES: 185 Union Avenue, Memphis, TN 38103.

By Teleconference: (866) 871–4318.

SUPPLEMENTARY INFORMATION:

Type of Meeting: The meeting is open to the public.

Purpose: This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will advise the Agency on creating an occupational information system tailored specifically for the Social Security Administration's (SSA) disability determination process and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The Panel will meet on Wednesday, June 9, 2010, from 1 p.m. until 5 p.m. (CST) and Thursday, June 10, 2010, from 8:30 a.m. until 11:30 a.m. (CST).

The tentative agenda for this meeting includes: a presentation on the status on the SSA FY 2010 Occupational Information System Development Project activities and the proposed integration with Panel activities; subcommittee chair reports; individual and organizational public comment; Panel discussion and deliberation, and an administrative business meeting. The final agenda will be posted on the Internet one week prior to the meeting at *http://www.socialsecurity.gov/oidap.*

The Panel will hear public comment during the Quarterly Meeting on Wednesday, June 9, from 4:30 p.m. to 5 p.m. (CST) and Thursday, June 10, from 10:15 a.m. to 11:15 a.m. (CST). Members of the public must reserve a time slot—assigned on a first come, first served basis—in order to comment. In the event that scheduled public comment does not take the entire time allotted, the Panel may use any remaining time to deliberate or conduct other business.

Those interested in providing testimony in person at the meeting or via teleconference should contact the Panel staff by e-mail to *OIDAP@ssa.gov.* Individuals providing testimony are limited to a maximum five minutes; organizational representatives, a maximum of ten minutes. You may submit written testimony, no longer than five (5) pages, at any time in person or by mail, fax or e-mail to *OIDAP@ssa.gov* for Panel consideration.

Seating is limited. Those needing special accommodation in order to attend or participate in the meeting (*e.g.,* sign language interpretation, assistive listening devices, or materials in alternative formats, such as large print or CD) should notify Debra Tidwell-Peters via e-mail to *debra.tidwell-peters@ssa.gov* or by telephone at 410–965–9617, no later than May 28, 2010. We will attempt to accommodate requests made but cannot guarantee availability of services. All meeting locations are barrier free.

For telephone access to the meeting on June 9 and 10, please dial toll-free to (866) 871–4318.

Contact Information: Records of all public Panel proceedings are maintained and available for inspection. Anyone requiring further information should contact the Panel staff at: Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, 3–E–26 Operations, Baltimore, MD 21235–0001. Fax: 410–597–0825. E-mail to: *OIDAP@ssa.gov.* For additional information, please visit the Panel Web site at *http://www.ssa.gov/oidap.*

Reminder Item:

On Tuesday, May 4, 2010 we published a **Federal Register** notice requesting comments on the recommendations submitted to us by the Occupational Information Development Advisory Panel in its report entitled "Content Model and Classification Recommendations for the Social Security Administration Occupational Information System, September 2009." The Panel report is available online at: *http://www.socialsecurity.gov/oidap/Documents/FinalReportRecommendations.pdf.*

The comment period for the May 4, 2010 **Federal Register** notice ends on June 30, 2010. Please follow the instructions for submitting comments that are outlined in the May 4, 2010 **Federal Register** document. You may view a copy of the May 4, 2010 **Federal Register** notice by accessing the following link: *http://www.socialsecurity.gov/oidap/Documents/SSA–2010–00181.pdf*

Deborah A. Tidwell,

Designated Federal Officer, Occupational Information Development Advisory Panel.

[FR Doc. 2010–12630 Filed 5–25–10; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 7028]

In the Matter of the Designation of Mohamed Belkalem; Also Known as Abdelali Abou Dher; Also Known as El Harrachi; as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive

Order 13284 of January 23, 2003, I hereby determine that the individual known as, also known as Abdelali Abou Dher, also known as El Harrachi committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: May 14, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–12679 Filed 5–25–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7029]

In the Matter of the Designation of Taleb Nail; Also Known as Djaafar Abou Mohamed; Also Known as Abou Mouhadji; Also Known as Mohamed Ould Ahmed Ould Ali; Also Known as Tayeb Nail as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Taleb Nail, also known as Djaafar Abou Mohamed, also known as Abou Mouhadji, also known as Mohamed Ould Ahmed Ould Ali, also known as Tayeb Nail committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: May 14, 2010.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2010–12681 Filed 5–25–10; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary: Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending May 15, 2010. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2010–0125.

Date Filed: May 11, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 1, 2010.

Description: Application of Carlsbad-Palomar Airlines, Inc. requesting a certificate of public convenience and necessity to engage in foreign scheduled air transportation of persons, property, cargo and mail.

Docket Number: DOT–OST–2005–22228.

Date Filed: May 12, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 2010.

Description: Application of Pinnacle Airlines, Inc. requesting an exemption to authorize Pinnacle to engage in scheduled foreign air transportation of persons, property and mail between Detroit, Michigan and Monterrey, Mexico. Pinnacle also requests an amendment to its experimental certificate of public convenience and necessity for Route 897 under streamlining regulatory procedures.

Docket Number: DOT–OST–2010–0131.

Date Filed: May 14, 2010.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 4, 2010.

Description: Application of Aegean Airlines Societe Anonyme d/b/a Aegean Airlines S.A. requesting a foreign air carrier permit and corresponding exemption authority to the full extent authorized by the Air Transport Agreement by the United States and the European Community and its Member States to enable it to engage in: (i) Foreign scheduled and charter air transportation of persons, property and mail from any point or points behind and Member State of the of the European Union via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (ii) foreign scheduled and charter air transportation of persons, property and mail between any point or points in the United states and any point or points in any member of the European Common Aviation Area ("ECAA"); (iii) other charters pursuant to the prior approval requirements; and (iv) transportation authorized by and additional route rights made available to European Community carriers in the future.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations Altenate Federal Register Liaison.

[FR Doc. 2010–12656 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on a Proposed Highway Project in California

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the

meaning of 23 U.S.C. 139(1)(1). This action relates to an approval of a proposed highway project corridor.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway Project will be barred unless the claim is filed on or before November 22, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Gary Sweeten, North Team Leader, Local Agency Programs, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone (916) 498–5128, *gary.sweeten@dot.gov*, or John Webb, Chief, Office of Environmental Services, California Department of Transportation (Caltrans), 703 B Street, Marysville, CA 95901, (530) 741–4393, *john_webb@dot.ca.gov*, or Celia McAdam, Executive Director, Placer County Transportation Planning Agency (PCTPA), 299 Nevada Street, Auburn, CA 95603, (530) 823–4030, *cmcadam@pctpa.net.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the Placer Parkway Corridor Preservation Project—Tier 1 in the State of California. The FHWA has selected the Alternative 5 Corridor with a no access buffer zone for the future Placer Parkway project in south Sutter County and southwestern Placer County, California. The selection of a corridor will allow for the protection of the corridor and the facilitation of land use and circulation planning by local agencies. FHWA based its decision on the Final Tier I Environmental Impact Statement/ Program Environmental Impact Report (EIS/EIR) and Final Tier 1 Section 4(f) Evaluation (November 2009) and its supporting studies. With the adoption of this Record of Decision (ROD) by FHWA, Caltrans and Local Transportation Agencies will use the Tier 1 EIS/EIR and its supporting studies to proceed with the identification and environmental analysis of project level design and operational alternatives, with the knowledge that the overall project location has been approved.

Actions by the Federal agencies and the laws under which such actions were taken are described in the Final Tier 1 EIS/EIR for the project. The ROD was approved on May 7, 2010. The Final Tier 1 EIS/EIR and other documents in the FHWA administrative record file are available by contacting the FHWA, Caltrans, or the PCTPA at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, as amended [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C 303].

4. *Wildlife and Plants:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(aa)–11]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970, as amended [42 U.S.C. 61].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319)]; TEA–21 Wetland Mitigation [23 U.S.C. 103(b)(6)(m).

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13112 Invasive Species; E.O. 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(1)(1).

Issued on: May 20, 2010.

Maiser Khaled,

Director, National Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2010–12634 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–25]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 15, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0134 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the

comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 21, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0134.

Petitioner: Al's Aerial Spraying, LLC.

Section of 14 CFR Affected: 14 CFR 137.51.

Description of Relief Sought: Al's Aerial Spraying, LLC., requests relief to utilize single engine Pratt & Whitney PT–6 turboprop powered Air Tractor aircraft to takeoff and make turnarounds over congested areas in a loaded configuration.

[FR Doc. 2010–12639 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2010–26]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before June 15, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0415 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laverne Brunache (202) 267–3133 or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 21, 2010.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2010–0415.

Petitioner: West Bend Air, Inc.

Section of 14 CFR Affected: 14 CFR 135.385(d).

Description of Relief Sought: West Bend Air, Inc., requests an exemption that would grant it the ability to choose between the 60% Rule or the 80% Rule for wet or slippery runway usage under their Destination Airport Analysis Program (DAAP).

[FR Doc. 2010–12640 Filed 5–25–10; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
May 26, 2010

Part II

Environmental Protection Agency

40 CFR Parts 85 and 86
Clean Alternative Fuel Vehicle and Engine Conversions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 85 and 86

[EPA–HQ–OAR–2009–0299; FRL–9149–9]

RIN 2060–AP64

Clean Alternative Fuel Vehicle and Engine Conversions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to simplify and streamline the process by which manufacturers of clean alternative fuel conversion systems may demonstrate compliance with vehicle and engine emissions requirements. Specifically, EPA is proposing to revise the regulatory criteria for gaining an exemption from the Clean Air Act prohibition against tampering for the conversion of vehicles and engines to operate on a clean alternative fuel. Under existing EPA regulations, an exemption from the tampering prohibition may only be granted to vehicles and engines covered by a certificate of conformity. The proposed revisions would create additional compliance options beyond certification that would protect manufacturers of clean alternative fuel conversion systems against a tampering violation, depending on the age of the vehicle or engine to be converted. The new options would alleviate some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles are sustained.

DATES: Comments must be received on or before July 23, 2010. Under the Paperwork Reduction Act, comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 25, 2010.

Public Hearing: EPA has tentatively scheduled a public hearing about this proposal for 9 a.m. June 23, 2010. EPA will hold the hearing only if any party notifies EPA by June 18, 2010 of interest in presenting oral testimony at the hearing. The hearing will start at 9 a.m. local time and continue until everyone has had a chance to speak.

EPA will cancel the hearing if no one expresses interest by June 18, 2010. EPA will notify the public of a cancellation by publication in the **Federal Register**, via its alternative fuel conversion Web site, *http://www.epa.gov/otaq/consumer/fuels/altfuels/altfuels.htm* and via Enviroflash.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0299 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Mail:* Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0299. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2009–0299. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Public Hearing: The June 23, 2010 hearing will be held at the EPA National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood Drive, Ann Arbor, Michigan 48105. The hearing will start at 9 a.m. local time and continue until everyone has had a chance to speak. See the Supplementary Information for more information on the public hearing.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0299. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the following location: EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Amy Bunker, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan 48105. Telephone: (734) 214–4160. E-mail Address: *bunker.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing

Anyone wishing to present testimony about this proposal at the public hearing should notify the general contact person (*see* **FOR FURTHER INFORMATION CONTACT**) no later than five days prior to the day of the hearing. The contact person should be given an estimate of the time required for the presentation of testimony and notification of any need for audio/visual equipment. Testimony will be scheduled on a first come, first serve basis. A sign-up sheet will be available at the registration table the morning of the hearing for scheduling those who have not notified the contact earlier. This testimony will be scheduled on a first come, first serve basis to follow the previously scheduled testimony.

EPA requests that approximately 50 copies of the statement or material to be presented be brought to the hearing for distribution to the audience. In addition, EPA would find it helpful to receive an advance copy of any statement or material to be presented at the hearing at least one week before the scheduled hearing date. This is to give EPA staff adequate time to review such material before the hearing. Such advance copies should be submitted to the contact person listed.

The official record of the hearing will be kept open for 30 days following the hearing to allow submission of rebuttal and supplementary testimony. All such submissions should be directed to Docket No EPA–HQ–OAR–2009–0299 (*see* **ADDRESSES**). The hearing will be conducted informally, and technical rules of evidence will not apply. A written transcript of the hearing will be placed in the above docket. Anyone desiring to purchase a copy of the transcript should make individual arrangements with the court reporter recording the proceedings.

Affected Entities

This action will affect companies and persons that manufacture, sell, or install alternative fuel conversions for light-duty vehicles, light-duty trucks, medium-duty passenger vehicles, and heavy-duty vehicles and engines. Such entities are categorized as follows:

NAICS Codes [1]	Examples of potentially regulated entities
335312	Motor and Generator Manufacturing.
336312	Gasoline Engine and Engine Parts Manufacturing.
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.
336399	All Other Motor Vehicle Parts Manufacturing.
811198	All Other Automotive Repair and Maintenance.

This list is not intended to be exhaustive, but rather to provide a guide regarding entities likely to be affected by this action. To determine whether particular activities may be affected by this action, you should carefully examine the regulations. You may direct questions regarding the applicability of this action to the contact as noted above in **FOR FURTHER INFORMATION CONTACT**.

Table of Contents

[1] North American Industry Classification System (NAICS).

I. Introduction

With the vast majority of vehicles in the United States designed to operate on gasoline or diesel fuel, there has been a longstanding and growing interest by the public in aftermarket fuel conversion systems. These systems allow gasoline or diesel vehicles to operate on alternative fuels such as natural gas, propane, alcohol, or electricity. Use of clean alternative fuels opens new fuel supply choices and can help consumers address concerns about fuel costs, energy security, and emissions. The U.S. Environmental Protection Agency (EPA) is responsible for ensuring that all vehicles and engines sold in the United States, including aftermarket conversions, meet emission standards. Today EPA is proposing to simplify and streamline the process by which manufacturers of clean alternative fuel conversion systems may demonstrate compliance with these vehicle and engine emissions requirements. The new options would reduce some economic and procedural impediments to clean alternative fuel conversions while maintaining environmental safeguards to ensure that acceptable emission levels from converted vehicles are sustained.

The conversion of vehicles or engines to operate on fuels other than those for which they were originally designed may yield certain benefits, but it also presents several legal and environmental concerns. These concerns stem from Clean Air Act (CAA, the Act) provisions intended to ensure that vehicles and engines remain clean throughout their useful life. To this end, the Act requires EPA to establish motor vehicle emission standards that apply throughout useful life, and to verify through issuance of a certificate of conformity that any vehicle or engine entered into commerce complies with the established emission standards.[2] Once certified, the vehicle or engine generally may not be altered from its certified configuration.[3] The CAA prohibition against alteration or "tampering" is important because emission standards apply well beyond a vehicle's or engine's initial entry into commerce. It is extremely difficult to reconfigure integrated and sophisticated modern automotive systems, precisely designed to achieve low pollution levels over time, without negatively affecting their durability or emissions performance.

EPA has long recognized vehicle alteration for the purpose of clean alternative fuel conversion as a special case because while improperly designed or installed conversions can increase emissions, properly engineered conversions can reduce, or at least not increase, emissions. Furthermore use of alternative fuels can contribute to achieving other goals such as diversifying the fuel supply through use of domestic energy sources. Therefore, EPA has established policies through which conversion manufacturers can demonstrate that the conversion does not compromise emissions compliance. It has proven challenging however to design an appropriate demonstration that ensures long-term compliance while not imposing overly burdensome testing and administrative requirements, especially for the small businesses that largely comprise the conversion industry.

The existing compliance demonstration required of conversion manufacturers for a regulatory exemption from tampering involves obtaining a certificate of conformity. This means that converters must follow essentially the same rigorous certification process that EPA requires of original equipment manufacturers (OEMs). The certification requirements currently in place for all converters give EPA sufficient oversight from an emissions perspective but implementation can be problematic in certain conversion situations. The current regulations were finalized on September 21, 1994 (59 FR 48472) and are located in 40 CFR part 85, subpart F ("the subpart F regulations"). In the 15 years since these regulations were promulgated, experience has shown that the OEM-like certification program for aftermarket conversions is not an optimal mechanism for ensuring compliance with applicable emission standards, particularly for older vehicles and engines. EPA has encountered several practical difficulties when using pre-production certification test procedures on older vehicles and engines. Similarly, certain aspects of the certification procedure are not well suited to aftermarket manufacturers. Some small conversion manufacturers, furthermore, have expressed concerns that the complexity of the certification process presents a barrier to entry into the alternative fuel conversions market.

For all these reasons, EPA believes it is reasonable to modify the current certification requirement for clean alternative fuel converters seeking exemption from the tampering prohibition. The new program would expand compliance options to include less burdensome demonstration requirements that would nonetheless sustain EPA's oversight and longstanding commitment to the environmental integrity of clean alternative fuel conversions.

Today, EPA is proposing a new approach that streamlines the regulatory process and introduces new flexibilities for conversion manufacturers, while ensuring that converted vehicles and engines retain acceptable levels of emission control. The revised program would also address the uncertainty some converters may experience in determining whether a conversion constitutes tampering that could result in liability. EPA proposes to amend the regulatory procedures in 40 CFR part 85, subpart F and part 86 to remain consistent with the CAA yet reflect the concept that it is appropriate to treat conversion requirements differently based on vehicle or engine age. The new program would facilitate age-appropriate testing and compliance procedures by placing alternative fuel conversions into one of three categories: (1) Conversions of vehicles or engines that are "new and relatively-new" (hereafter referred to as "new" solely for the purpose of this preamble),[4] (2)

[2] *See* CAA sections 202, 203, and 206.

[3] CAA section 203.

[4] *See* Section IV.A and proposed §§ 85.505 and 85.510. Proposed §§ 85.505(b)(1) and 85.510 apply

conversions of vehicles or engines that are no longer new (*i.e.,* no longer "new and relatively-new") but that still fall within EPA's definition of full useful life, "intermediate age vehicles", and (3) conversions of vehicles or engines that are outside EPA's definition of useful life.

EPA is also requesting comment on whether to establish a subcategory for vehicles and engines that exceed the useful life threshold in mileage before they reach the threshold in years, with its own demonstration requirement.

Under our proposal, for the first category, conversions of new vehicles and engines, EPA believes that a requirement for a certificate of conformity remains appropriate because those vehicles and engines were entered into commerce as the subject of a recently issued OEM certificate of conformity. Such vehicles would typically have the majority of their useful life remaining and the condition of a relatively new vehicle or engine is still likely to be representative of an OEM vehicle or engine used in certification testing. Furthermore, a certification requirement for new vehicle and engine conversion would eliminate any perceived incentive that might otherwise exist for OEMs to circumvent certifying original-configuration alternative fuel vehicles/engines, by instead converting already-certified traditional fuel configurations to operate on an alternative fuel. Thus, EPA proposes to largely retain the current certification requirements for manufacturers of conversion systems for new vehicles and engines, while providing some new flexibility in grouping such vehicles for certification purposes. For the second category, intermediate age vehicles and engines, we are proposing that manufacturers of conversion systems demonstrate through testing that the converted vehicle or engine still meets applicable emission standards promulgated under the authority of the CAA section 202. For the third category, vehicles and engines outside their full useful life, there is no longer an applicable standard to serve as a benchmark. Since it is not possible to assess compliance by comparing emissions to a standard, EPA is seeking comment on three options through which manufacturers of conversion systems for older vehicles and engines could demonstrate that the conversion is technically viable and will not increase emissions. The options are described in detail in Section IV.C.

EPA is also offering an alternate approach for comment that would create two subcategories of outside useful life vehicles. The alternate approach is described in detail in Section IV.D.

The primary purpose of the new program EPA is proposing today is to facilitate the compliance process for clean alternative fuel conversion manufacturers. Consistent with this intent, EPA would require any conversion to be technically sound, regardless of the vehicle or engine age category, and would continue to hold the conversion manufacturer accountable for acceptable emissions performance once the converted vehicle or engine is in customer service. EPA would employ compliance tools as appropriate, such as confirmatory testing and in-use vehicle emissions monitoring to check fleet performance, as it does with OEM vehicles.

II. Authority

A. Vehicle and Engine Standards and Certification

The CAA grants EPA authority to establish, administer, and enforce emission standards for motor vehicles and engines. The CAA states that a new vehicle or engine may not be introduced into commerce unless it has been issued a certificate of conformity ("certificate") by EPA.[5] A certificate is issued when a manufacturer has demonstrated to EPA through a regulatory testing and data submission process that the vehicle or engine will conform for its useful life to the standards promulgated by EPA.[6] Each certificate is valid for up to one model year.[7]

B. Useful Life

The CAA directs EPA to promulgate emission standards that are applicable for a vehicle or engine's "useful life," and to establish the useful life period through regulation.[8] The full useful life varies among pollutant standards and among vehicle or engine categories.[9] For example, recent model year light-duty vehicles (cars and small trucks) have a useful life of 10 years or 120,000 miles, whichever comes first.[10] Recent model year heavy-duty complete vehicles and medium-duty passenger vehicles have a useful life of 11 years or 120,000 miles, whichever comes first.[11] For current Otto-cycle heavy-duty engines, the useful life is 110,000 miles or 10 years, whichever first occurs.[12] For current diesel heavy-duty engines (also referred to as "compression-ignition" or "diesel cycle"), there are different useful life definitions based on gross vehicle weight, pollutant being controlled, and test procedure, ranging from 10 years or 110,000 miles, whichever first occurs, to 10 years or 435,000 miles or 22,000 hours of engine operation, whichever first occurs.[13]

C. "Tampering" Prohibition

Under CAA section 203(a)(3), it is prohibited:

> (A) For any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or
>
> (B) For any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use.

The CAA prohibition against tampering applies to vehicles regardless of age or mileage accumulation.[14]

D. Exemption for Conversions

The CAA provides for several statutory exemptions to the prohibition on tampering. One of these exemptions is for actions which are "for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel."[15]

to "new and relatively-new" vehicles or engines, *i.e.,* where the date of conversion is in a calendar year that is not more than one year after the original model year of the vehicle or engine. In this preamble, we refer to these "new and relatively-new" vehicles and engines as "new" only as a shorthand reference to the proposed category of "new and relatively-new" engines or vehicles. This shorthand use of "new" is not intended to mean that these engines or vehicles are "new" under the Act or any EPA regulations.

[5] CAA section 203(a)(1).

[6] CAA sections 202 and 206.

[7] 40 CFR 86.1848–01.

[8] CAA section 202.

[9] Regulations may also include optional standards such as in 40 CFR 86.1805–04(b) and (e).

[10] 40 CFR 86.1805–04.

[11] 40 CFR 86.1805–04.

[12] 40 CFR 86.004–2.

[13] 40 CFR 86.004–2.

[14] Any alteration of a motor vehicle or engine, its fueling system, or the integration of these systems, which may be classified as "tampering" under section 203(a) and which does not satisfy the proposed exemptions would be a violation of the CAA for which section 205 authorizes EPA to assess penalties, currently set at up to $37,500 per vehicle or engine. See 40 CFR part 19.

[15] CAA section 203(a).

E. Authority for Proposed Clean Alternative Fuel Conversions Program

The regulatory issue posed by vehicle and engine clean alternative fuel conversions is how to design a program that allows manufacturers to demonstrate that their conversion system warrants an exemption from the prohibition against tampering. The 1994 rulemaking that created the subpart F regulations stated, "It has always been the Agency's policy that an aftermarket conversion not degrade the emissions performance of the original vehicle as a condition of being exempt from prosecution for tampering violations." [16]

Today's proposal is based on EPA's interpretation that section 203(a) provides a tampering exemption for clean alternative fuel conversions. The section 203(a) exemption from tampering applies when the otherwise prohibited act is for "the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 202 when operating on such fuel." Thus, the threshold qualification for the exemption is the proper purpose (*i.e.* "conversion * * * for use of a clean alternative fuel"). The second criterion for the exemption is compliance with the applicable standard.

EPA is proposing a program that requires a demonstration to satisfy both of these criteria for vehicles and engines that are still within their useful life. For vehicles and engines that are outside their useful life, even though a standard under CAA Section 202 is no longer applicable, EPA believes it is important to provide a legal path under which outside useful life vehicles and engines can be converted to use alternative fuels. Only clean alternative fuel conversion systems that comply with the proposed regulations would qualify for the CAA section 203(a) exemption from the tampering prohibition for application to outside useful life vehicles and engines. Thus, EPA is proposing a program that requires the conversion manufacturer to demonstrate that the threshold criterion is met (*i.e.* "conversion * * * for use of a clean alternative fuel"). To meet the threshold criterion, the conversion manufacturer would be required to demonstrate that emissions have not degraded as a result of the clean alternative fuel conversion. Such a demonstration would serve to maintain air quality, consistent with the congressional intent in creating the exemption.

[16] 59 FR 48478 (Sep. 21, 1994).

III. Program Design Elements Applicable to All Clean Alternative Fuel Conversions

The clean alternative fuel conversion program EPA is proposing is designed to increase flexibility for conversion manufacturers while ensuring that converted vehicles retain acceptable emission levels. Certain aspects of the program design depend on the age of the vehicle or engine being converted, while other program elements are common to all conversions. This section describes those program elements which are applicable to all clean alternative fuel conversions, regardless of vehicle or engine age.

In general there are three types of typical alternative fuel conversions: (1) Those that result in dedicated alternative fueled vehicles or engines; (2) those that result in dual-fueled vehicles or engines; and (3) those that result in flex-fueled (also known as bi-fueled) vehicles or engines.[17] The first type, dedicated alternative fueled vehicles or engines, are only capable of operating on one type of fuel. Dual-fueled vehicles or engines, the second type, can operate on two types of fuel, either the fuel they were originally designed for or on a new alternative fuel. The third type, flex-fueled or bi-fueled vehicles or engines, are able to operate on either the original fuel or the alternative fuel, or on a mix of the two fuels. For example, an ethanol flex-fueled vehicle operates on 100% gasoline or on any combination of gasoline and ethanol, up to an 85% mixture of ethanol (known as "E85").

EPA currently regulates all types of alternative fuel conversions pursuant to the regulations specified in 40 CFR part 85, subpart F and certification provisions in 40 CFR part 86 and part 1065. EPA would continue to regulate the typical types of conversions under today's proposal, along with newer or innovative types of fuel conversions that do not fit neatly into one of the general categories listed above. These include conversions of conventional gasoline or diesel vehicles to hybrid-electric vehicles, and conversions from hybrid-electric vehicles to plug-in hybrid electric vehicles. Since alternative fuel conversion activity often acts as a laboratory for new fuels and new technology, it is not possible to present an exhaustive list of covered categories or special cases. Each special case may require unique test procedures that are appropriate to new and developing technologies.[18]

[17] Note that other Federal agencies may define the terms dual-fuel and bi-fuel differently than EPA definitions.

A. Clean Alternative Fuel Conversions

Under today's proposal, only clean alternative fuel conversions that are designed in accordance with EPA requirements, and for which the manufacturer has complied with the proposed regulations would qualify for the CAA section 203(a) exemption from the tampering prohibition. EPA proposes clean alternative fuel conversion (also referred to as "fuel conversion" or "conversion system") to be any alteration of a motor vehicle or engine, its fueling system, or the integration of these systems, that allows the vehicle or engine to operate on a fuel or power source different from the fuel or power source for which the vehicle or engine was originally certified; and that is designed, constructed, and applied consistent with good engineering judgment and in accordance with all applicable regulations. A clean alternative fuel conversion also includes the components, design and instructions to perform this alteration. A clean alternative fuel conversion manufacturer (also referred to as "conversion manufacturer" or "converter") is a company or individual that manufactures, assembles, sells, imports, or installs a motor vehicle or engine fuel conversion for the purpose of use of a clean alternative fuel. To demonstrate clean alternative fuel conversion compliance, conversion manufacturers would be required to submit data and/or other information to EPA. For purposes of this proposal we will refer to the appropriate submission as a "demonstration" and to the process of submitting the demonstration as "notification." The specifics of the demonstration would depend on the age of vehicles or engines being converted, but the general demonstration and notification requirements would apply to all conversion systems. Section IV contains a detailed description of the age-specific demonstration and notification requirements. EPA will maintain lists of conversion systems that have satisfied the age-appropriate demonstration requirements through the EPA notification process and will make this information publicly available.

Any requirement in the existing subpart F regulations, testing or otherwise that is not specifically addressed in this proposal would remain in place. EPA seeks comment about whether there are aspects of 40 CFR part 86 or part 1065

[18] *See* 40 CFR 86.1840–01.

implementation that have direct implications for clean alternative fuel conversions and that should be updated to reflect the proposed changes in requirements for clean alternative fuels conversion.

B. Good Engineering Judgment

A clean alternative fuel conversion manufacturer would be eligible for the exemption from the CAA tampering prohibition only if the conversion system is designed, constructed, and applied using good engineering judgment. EPA understands that in the context of exempting clean alternative fuel conversions from the CAA tampering prohibition, certain aspects of good engineering judgment may vary as a function of clean alternative fuel type, OEM technology, and other factors. In general, good engineering judgment would mean that the conversion manufacturer has provided sufficient technical documentation for EPA to ascertain that the converted vehicle or engine will continue to satisfy emissions requirements, such as meeting standards within useful life or maintaining emissions performance after conversion. Such documentation would need to be submitted to EPA in writing before any conversion kit is distributed or installed. EPA would evaluate several factors in assessing whether a conversion system represents good engineering judgment. These factors may include the following: whether the system employs technology that is at least equivalent and equally effective in design, materials and overall sophistication to that of the OEM system; uses components that are sized to match the engine power requirements; uses instantaneous feedback control; and maintains proper On-Board Diagnostic (OBD) system function. Documentation provided to support a claim of good engineering judgment may include emissions test data or other engineering analysis to demonstrate that the conversion technology will sustain acceptable emissions performance in the intended vehicles or engines. Good engineering judgment also dictates that any testing or data used to satisfy demonstration requirements must be generated at a quality laboratory that is capable of performing emission tests that comply with EPA regulations and that exercise good laboratory practices.

C. Vehicle/Engine Groupings and Emission Data Vehicle Selection

The unit of vehicle certification and compliance under the CAA and under EPA's implementing regulations is a group of vehicles that share similar technologies, design features, and emission control characteristics. Thus each OEM certificate of conformity can and usually does cover several vehicle models that have in common a unique combination of exhaust emissions, evaporative emissions, and on-board diagnostic (OBD) system features. The common exhaust emission system characteristics are represented by a grouping called a "test group." The common evaporative emission system characteristics are represented by an "evaporative/refueling family." The OBD system features are represented by an "OBD group." Light-duty vehicles and Otto-cycle complete heavy-duty vehicles receive a single certificate covering a unique combination of test group, evaporative/refueling family, and OBD group.

The unit of certification is slightly different for heavy-duty engines. Instead of receiving a single certificate that covers both exhaust and evaporative emission control characteristics, heavy-duty engines are issued separate certificates by "engine family" for engines having common exhaust characteristics, and by evaporative/refueling families, if applicable.[19] Even though heavy-duty engine certificates are based on a different unit, the concept behind allowable groupings remains consistent between light-duty vehicle and heavy-duty engine certification and compliance. Groupings share similar technologies, design features, and emission control characteristics. In this proposal, EPA is proposing to expand the grouping flexibility for conversion manufacturers by permitting somewhat broader grouping criteria for both light-duty vehicles and heavy-duty engines than those available for OEM certification.

The general concept behind groupings for the conversion program would apply to all vehicle and engine age categories, although the specific criteria for designating conversion groups would vary somewhat among the new, intermediate age, and outside useful life programs (*see* Section IV). Conversion manufacturers would use the applicable criteria to designate a conversion group, and would select a "worst case" emissions data vehicle (EDV) or emission data engine (EDE) to represent the group for demonstration and notification purposes. Consistent with current requirements, the conversion EDV/EDE would be expected to represent the most challenging emissions compliance technology of all the models it represents. Use of a worst-case emission data vehicle or engine gives EPA confidence that all models covered by a certificate in the case of OEM certification, or by EPA's acceptance of the conversion group demonstration in the case of conversion, comply with all applicable emission requirements. These may include exhaust emission standards, evaporative emission standards, OBD compliance requirements, and other criteria. Therefore conversion manufacturers may need to submit data from more than one EDV or EDE to represent the worst case condition for each of the applicable requirements.

D. Flex-Fuel (Bi-Fuel) and Dual-Fuel Conversions

EPA regulations require flex-fueled and dual-fueled vehicles and engines to comply with all requirements established for each fuel or blend of fuels on which the system is capable of operating.[20] These requirements would continue to apply to flex- and dual-fuel conversions. Certain demonstration requirements could potentially be waived for clean alternative fuel conversions if the conversion manufacturer has not altered the OEM configuration of the vehicle or engine when operating on its original fuel. However, if the conversion of the vehicle or engine to dual-fuel or flex-fuel operation alters the OEM certified configuration in any way while operating on the original fuel, then EPA would require the conversion manufacturer to demonstrate compliance for each fuel with all applicable exhaust emissions, evaporative/refueling emissions, and OBD demonstration and notification requirements, appropriate for the age of the vehicle as described in Section IV.

EPA proposes to continue to allow a statement of compliance in lieu of test data for operation on the original fuel if the conversion manufacturer can attest that the conversion retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle was originally certified and the conversion retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle was originally certified. The conversion manufacturer would still be required to submit data demonstrating compliance with the applicable requirements when the

[19] Certain fuels such as diesel fuel do not have heavy-duty evaporative emissions standards.

[20] *See, e.g.,* 40 CFR 86.1810–01, 40 CFR 86.1811–04, 40 CFR 86.1812–01, 40 CFR 86.1813–01, 40 CFR 86.1814–01, 40 CFR 86.1814–02, 40 CFR 86.1815–01, 40 CFR 86.1815–02, 40 CFR 86.1816–05, 40 CFR 86.1816–08.

vehicle is operating on the new alternative fuel.[21]

Because a flex-fuel vehicle or engine operates on a fuel mixture, with the fuels combusted together at a variety of fuel ratios, EPA would generally require a flex fuel vehicle or engine conversion manufacturer to demonstrate compliance with applicable requirements for each fuel. The conversion manufacturer may need to conduct testing on multiple fuel ratios to adequately represent worst case emission scenarios.[22] Conversion manufacturers should work with EPA to make good engineering judgment decisions about the worst case emission data vehicle or engine requirements for flex-fuel vehicles and engines.

EPA has specific concerns about canister purge in dual-fuel conversions because of potential for uncontrolled evaporative emissions when the converted vehicle or engine is operating on the new alternative fuel. Although much of the OEM functionality is likely to remain fully operational on the original fuel after conversion to dual-fuel, OEM canister purge may have been designed to depend on the frequency and duration of engine operation on the original fuel. Therefore, for dual-fuel conversions, EPA proposes to require the conversion manufacturer either to test canister purge and submit data, or to provide a separate attestation for evaporative emission canister purge. For vehicles and engines converted to dual-fuel operation, the attestation would include statements that the evaporative emissions canister purge continues to operate as originally designed while operating on each fuel. EPA would expect the clean alternative fuel conversion manufacturer to supply a description of the canister purge operation while the vehicle or engine is operating on the alternative fuel. EPA would expect that the canister purge while operating on the alternative fuel is identical to the OEM canister purge operation.

E. Vehicle and Packaging Labels

Vehicle and engine labeling requirements for clean alternative fuel conversions are currently set forth in 40 CFR 85.505. These regulations list the information that must be included on the label and require the label to be permanently affixed adjacent to the OEM vehicle emissions control information (VECI) label. EPA proposes to maintain these labeling requirements for clean alternative fuel converted vehicles and engines. We also propose to require some additional content on the vehicle conversion label. The newly required content would include the conversion manufacturer's evaporative/refueling family and test group or engine family and a statement specifying the minimum age and/or mileage requirements, OEM model year of vehicles, and the specific OEM test groups or engine families to which the conversion system is applicable. Conversion manufacturers would be required to submit the vehicle label information to EPA as part of the notification process. Failure to supply or install compliant labels would leave conversion manufacturers and installers subject to prosecution for tampering.

It has been suggested that conversion manufacturers be required to submit to EPA Vehicle Identification Numbers (VIN) information for all converted vehicles, in addition to vehicle label information. The reason for VIN tracking would be to assist automotive dealers or repair facilities, State Inspection and Maintenance program personnel, and others who might need to know whether a vehicle or engine has been altered from its OEM configuration. EPA requests comment as to whether converters should submit VIN tracking information to EPA and whether EPA should make such information publicly available.

EPA proposes that any packaging label information must be consistent with the conversion manufacturer's demonstration and notification to EPA. This would include the minimum vehicle or engine age requirements and OEM manufacturer, model year, carline (model) and vehicle test groups or engine families to which the clean alternative fuel conversion may be applied.

EPA seeks comment on whether the proposed information content of the vehicle and packaging labels is appropriate for vehicles and engines that have been converted to operate on a clean alternative fuel.

F. Marketing

EPA would continue to expect that any marketing material associated with any aftermarket fuel conversion product would be consistent with and not contravene the information required on the vehicle or packaging labels. For instance, the marketing of the applicability of the product must be consistent with the label information to ensure the product would not be misapplied to other vehicles or engines.[23]

G. Compliance

Clean alternative fuel conversion manufacturers would continue to be subject to all certification requirements and warranty, defect, and recall requirements applicable to new vehicle and engine manufacturers in 40 CFR parts 85 and 86.[24]

EPA plans to audit conversion manufacturers and enforce against violations.

1. Emission Standards

EPA has previously determined that it is appropriate to require vehicle and engine fuel conversions to meet the same emission standard as required for the originally certified OEM vehicle or engine.[25] OEM standards would continue to apply for the required test cycles, including intermediate useful life standards and full useful life standards where applicable.[26] If a converter designates a conversion group that combines multiple OEM test groups/engine families, the most stringent OEM standards represented within that group would become the applicable standards for the conversion group. For example, if a converter establishes a conversion test group that includes OEM test groups originally certified to Tier 2, Bin 4 and Bin 5 standards, all the vehicles in the combined conversion test group would be subject to more stringent Tier 2, Bin 4 standard.

a. Light-Duty and Heavy-Duty Complete Vehicle Gross Vehicle Weight Classes and Alternative Fuel Exceptions

Emission standards for light-duty passenger cars, light-duty trucks,

[21] Compliance testing and data submission requirements will vary by vehicle age and mileage. *See* Section IV.

[22] Compliance testing and data submission requirements will vary by vehicle age and mileage. *See* Section IV.

[23] If any marketing material implies or states that the installation of the conversion system is legal or appropriate for vehicles/engines not listed in the documentation provided to EPA, EPA would deem the marketing material to be evidence that the marketer caused a customer to install an inappropriate conversion system and thus tampered with the vehicle.

[24] 40 CFR 85.503 and 85.504 and 59 FR 48478.

[25] 59 FR 48488.

[26] In almost all cases the standards in place for an OEM vehicle or engine will continue to apply to the converted vehicle or engine. The only exceptions involve fuel specific standards (or exemptions from standards) that were not applicable to the OEM configuration but are applicable to the converted configuration, or vice versa. In those cases the converted vehicle/engine will be held to the fuel-specific standard that would have been in place for an OEM vehicle/engine certified to operate on that fuel. For example, diesel-fueled vehicles are currently exempt from evaporative emission standards but vehicles fueled with most other fuels are not. If a diesel fuel vehicle is converted to run on an alternative fuel, the converted vehicle would be held to the evaporative emission standards that would have applied to an OEM vehicle certified operating on that fuel.

medium-duty passenger vehicles, and Otto-cycle heavy-duty complete vehicles less than 14,000 pound gross vehicle weight are codified in 40 CFR part 86, subpart S.[27] Standards are specific to vehicle type and gross vehicle weight ratings.

Light-duty vehicles, both OEM vehicles and conversions, are currently exempt from Supplemental Federal Test Procedure (SFTP) standards and cold carbon monoxide (CO) standards when certified on alternative fuels.[28] However, for dual-fuel and flex-fuel (bi-fuel) light-duty vehicles, SFTP and cold CO standards do apply while the vehicle is operating on gasoline or diesel fuel.[29] At this time, EPA is not proposing any changes to the regulations in 40 CFR 86.1810–01(i)(4). However, EPA is requesting comment on whether SFTP standards and testing are appropriate for alternative fueled light-duty vehicles; both OEM vehicles and clean alternative fuel conversions (*see* Section IV.A.3.a).[30] In the future, if SFTP standards are amended to apply to vehicles operated on alternative fuels, these standards and test procedures would also be applicable to fuel conversions.

b. Heavy-Duty Engine Types and Gross Vehicle Weight Classes

Heavy-duty engine standards are categorized in several ways. There are divisions by engine type, either compression ignition or spark ignition, and there are divisions by application gross vehicle weight. Standards for heavy-duty engines are described in 40 CFR part 86, subpart A. Generally, heavy-duty engine standards apply to engines installed in vehicles with a gross vehicle rating (GVWR) greater than 8,500 pounds. As noted in Section III.G.1, Otto-cycle complete vehicles must be certified using standards and procedures set forth in 40 CFR part 85, subpart F. In addition, Otto-cycle incomplete vehicles with GVWR up to 14,000 pounds which were optionally certified by the OEM using the provisions found in 40 CFR part 86, subpart S, would also follow these provisions for conversion to a clean alternative fuel.[31] OEM manufacturers of compression ignition engines in complete heavy-duty vehicles between 8,500 and 14,000 pounds may optionally chassis certify using the provisions in 40 CFR part 86, subpart S. The clean alternative fuel conversion manufacturer would use the same certification provisions (engine or chassis-certification provisions) that the OEM used at the time of the original certification.

c. Dual-Fuel Standards

EPA as a matter of policy requires dual fuel vehicles and engines to certify operation on both fuel types to the same emission standards. A dual-fuel natural gas-gasoline vehicle, for example, would need to certify to the same Tier 2 bin level for both natural gas and gasoline. The same policy applies to evaporative/refueling standards and family emission levels (FELs) for engines. Therefore, conversion manufacturers of systems that convert single-fuel OEM systems to dual-fuel systems must certify to the OEM standard, even if test data demonstrate that the converted vehicle or engine is able to meet a lower standard while operating on the alternative fuel. If a conversion manufacturer wishes to certify to a lower standard on both fuels, a demonstration would be required on both fuels showing compliance with the said standard. This policy would continue to apply to all vehicle fuel conversions, regardless of age or compliance program.[32] In each case the notification process for a dual-fuel vehicle will require separate submissions for groups of vehicles with different standards. However, test data from an EDV or EDE demonstrating compliance with a lower standard may be able to be carried across to other vehicles or engines that meet the criteria available for the combination of exhaust groups, such as test groups and engine families, described in Sections IV.A.2 and IV.B.2.

2. Useful Life

In the rulemaking that established the existing aftermarket conversions certification program, EPA determined it was not appropriate to extend the useful life of a conversion beyond that of the original vehicle given that conversions generally rely on many original vehicle components for proper operation.[33] EPA's revised program would leave this determination unchanged such that the applicable useful life of a converted vehicle or engine would not extend beyond the useful life of the original vehicle or engine. Thus, the useful life of the conversion would continue to end at the same time as the useful life of the original vehicle, including any optional useful life standards to which the OEM certified the original vehicle.[34]

3. On Board Diagnostics (OBD)

As part of the good engineering judgment requirement described in Section III.B, OEM vehicles or engines subject to OBD requirements would also be required to have properly functioning OBD systems once converted.[35] OBD systems are designed to monitor critical vehicle or engine emission control components and to alert the vehicle operator or State emissions inspection official to malfunction, deterioration, or other problems that might cause excessive emissions. States rely on OBD systems to flag vehicles that exceed Inspection and Maintenance thresholds and may require repair. OBD systems are also designed to store diagnostic information in the vehicle's computer to assist technicians in diagnosing and repairing the problem EPA is proposing that the conversion OBD system would need to include any new monitoring capability necessary to identify potential emission problems associated with the new fuel. In addition, consistent with other EPA regulations, EPA proposes that any dual-fuel clean alternative fuel conversion would require the OBD to remain fully functional on the original fuel.[36]

4. Durability Testing

Manufacturers must conduct durability testing for both exhaust and evaporative emissions to determine expected useful life deterioration. Durability procedures for light-duty vehicles and heavy-duty complete vehicles are codified in 40 CFR 86.1823–01, 86.1824–01, 1824–07, 1824–08, and 86.1825–01, 85.1825–08. Durability procedures for heavy-duty engines are currently set forth in 40 CFR 86.096–24, 86.098–24, 86.001–24,

[27] For purposes of this NPRM, this group of vehicles will be described as light-duty and heavy-duty complete vehicles from this point forward.

[28] All medium-duty passenger vehicles are also currently exempt from SFTP standards, regardless of fuel type. 40 CFR 85.1811–04(f)(1). Medium duty passenger vehicles, operating on gasoline, do have a cold CO standard (40 CFR 86.1811–04(g)).

[29] 40 CFR 86.1810–01(i)(4) and 40 CFR 86.1811–04(g).

[30] 40 CFR 86.1811–04(f).

[31] As described in Section III.G.1.a of this preamble.

[32] Compliance testing and data submission requirements will vary by vehicle age and mileage. *See* Section IV.

[33] 59 FR 48488.

[34] Examples of optional useful life include those described in 40 CFR 86.1805–04(b) and (e).

[35] OBD systems were phased in for light-duty and heavy-duty complete vehicles beginning in 1994. See 40 CFR 86.1806–01, 86.1806–04, and 86.1806–05. OBD systems were phased in for heavy-duty vehicles weighing less than 14,000 pounds GVWR beginning in 2004. 40 CFR 86.005–17. OBD requirements for heavy-duty engines for vehicles over 14,000 pounds begin phase-in in 2010. 40 CFR 86.005–18. According to 40 CFR 86.010–18(o)(1)(v), engines in vehicles over 14,000 pounds GVWR certified on alternative fuels are exempt from OBD requirements for model years 2010–2012.

[36] Multi-fueled vehicles must be compliant on both fuels. See, for example, 40 CFR 86.1811–01.

86.094–26, 86.001–26, 86.0004–26, 86.094–28, et al. In lieu of durability testing, these regulations provide that small volume manufacturers may be eligible to utilize EPA assigned deterioration factors to predict the emission rates at the end of a vehicle or engine's useful life. *See* Section IV.B.3.c for more information.

EPA requests comment as to whether the durability procedures that would be established under this proposal are appropriate for small and large volume conversion manufacturers. EPA also requests comment on whether the proposed procedures provide adequate assurance that the emission control systems in converted vehicles and engines will continue to function properly over time.

5. Warranty

The CAA requires manufacturers to warrant that a vehicle or engine is (1) designed, built, and equipped to conform to applicable regulations and (2) free from defects in material and workmanship which cause the vehicle or engine to fail to conform to applicable regulations for its useful life.[37] For light-duty vehicles, this defect warranty is applicable through two years or 24,000 miles of use (whichever first occurs).[38] Specified major emission control components, including catalysts, engine control units (ECUs), and OBD are warranted for eight years or 80,000 miles of use (whichever first occurs).[39] For Otto-cycle heavy-duty engines and vehicles (complete and incomplete) and light heavy-duty diesel engines, the warranty period is at least 5 years or 50,000 miles, whichever first occurs. For all other heavy-duty diesel engines, the warranty period is at least 5 years or 100,000 miles, whichever first occurs. For all heavy-duty engines the warranty period may not be shorter than the basic mechanical warranty period that the original equipment manufacturer provides.[40] Conversion manufacturers must accept in-use liability for warranty and recall as a condition for gaining exemption from tampering under EPA's current aftermarket conversions certification program.

EPA would continue to apply this approach to in-use liability for warranty under the revised clean alternative fuel conversions program being proposed today. Under this policy, the clean alternative fuel conversion manufacturer would normally be held accountable for fixing problems that occur as the result of conversion, while the OEM would generally retain responsibility for the performance of any parts or systems that retain their original function following conversion and are unaffected by the conversion. It is important that both clean alternative fuel conversion manufacturers and consumers understand these provisions because they could result in a transfer of warranty liability for certain failed components from the OEM to the converter. A reasonable indicator of cause and accountability might be whether the failure of the part or system is also occurring in non-converted configurations of the same vehicle. If so, the problem is most likely not related to conversion and the OEM would typically remain liable for performing repairs. If only converted vehicles are experiencing the problem, it would be appropriate to trace the problem to the conversion and to hold the converter responsible for warranty repairs. These views are consistent with the liability provisions in the existing subpart F regulations.[41] EPA seeks comment on the best way to inform consumers about the possibility that converting their vehicle or engine, even with an EPA compliant system, may transfer portions of their OEM warranty liability to the converter.

6. Other Provisions Applicable to Conversion Manufacturers

As stated above, all clean alternative fuel conversion manufacturers would continue to be subject to labeling, warranty, and certification requirements applicable to new vehicle and engine manufacturers in 40 CFR parts 85 and 86.[42] In addition, there are recall and defect reporting requirements in 40 CFR 85.503 and 85.504 which would also continue to apply.

Conversion manufacturers are subject to the recall regulations in 40 CFR part 85, subpart S and the emission defect reporting requirements in 40 CFR part 85, subpart T. If EPA determines that a substantial number of vehicles or engines in a class or category do not meet applicable emission standards in actual use even though they are properly maintained and used, EPA can require the manufacturer to recall and fix affected vehicles.[43] All manufacturers are also required to report to EPA certain defects affecting emission-related parts.

Sections 206, 207 and 208 of the Act authorize EPA to establish procedures to ensure that production vehicles and engines comply with emission standards when they are new and continue to comply with emission requirements after they are in customer service. These provisions provide EPA broad authority to conduct testing as the Administrator deems necessary to monitor in-use vehicle and engine compliance. EPA intends to extend these emission testing programs to cover clean alternative fuel conversions as well as OEM vehicles.

7. Misapplication

EPA may revisit the age-based approach being proposed today should there at any time be evidence of widespread conversion system misapplication that can be traced to differences among the age-based demonstration or notification requirements. For example, if exempted outside useful life conversion systems are commonly marketed to vehicles that are still within their useful life, EPA would not only consider the misapplication to be tampering, but would also consider revising this rule to eliminate or constrain the age-based demonstration approach.

H. Regulatory Procedures for Small Volume Manufacturers and Small Volume Test Groups

EPA regulations afford certain flexibilities to small volume manufacturers in recognition of special compliance challenges they may face. The clean alternative fuels industry has historically been comprised of companies that qualify for small volume manufacturer status. Existing eligibility criteria and special procedures available to small volume conversion manufacturers, along with changes under today's proposal, are discussed below.

1. Definition of Small Volume Manufacturers, Small Volume Test Groups, and Small Volume Engine Families

a. Light-Duty and Heavy-Duty Complete Vehicle Small Volume Manufacturers and Small Volume Test Groups

EPA has regulatory procedures specific to light-duty and heavy-duty complete vehicle small volume manufacturers and small volume test groups, set forth in 40 CFR 86.1838–01. A manufacturer is eligible for small volume manufacturer status for light-duty and heavy-duty complete vehicle procedures, if the manufacturer's annual model year motor vehicle and engine total sales volume in all States and territories of the United States (or aggregate sales volume for manufacturers in an aggregate

[37] 42 U.S.C. 7541.

[38] CAA section 207(i)(1).

[39] CAA section 207(i)(2).

[40] 40 CFR 86.004–2.

[41] 59 FR 48488.

[42] 40 CFR 85.504 and 59 FR 48478.

[43] CAA section 207(c).

relationship) is less than 15,000 units.[44] (For sales aggregation rules for related manufacturers, refer to 40 CFR 86.1839–01(b)(3)). A large volume manufacturer may also use small volume manufacturer certification procedures for test groups of vehicles which total less than 15,000 units. For small volume test group eligibility criteria for large volume manufacturers who participate in aggregate relationships, refer to 40 CFR 86.1838–01(b)(2) for more details.

b. Heavy-Duty Engine Small Volume Manufacturers

The EPA regulatory provisions for small volume heavy-duty engines are promulgated in 40 CFR 86.094–14, 86.096–14 and 86.098–14. Heavy-duty engine small volume manufacturer status is tiered. Certain procedures apply to manufacturers with aggregate sales of less than 301 units, and other procedures may apply to manufacturers with aggregate sales volumes less than 10,000 units. For sales aggregation rules, refer to 40 CFR 86.094–14(b)(2) and 86.094–14(b)(5).

2. Assigned Deterioration Factors

All light-duty and heavy-duty complete vehicle small volume manufacturers or qualified small volume test groups are eligible to use assigned deterioration factors (DFs) in lieu of durability testing to predict emission rates at the end of a vehicle's useful life.[45] EPA assigned deterioration factors are authorized in 40 CFR 86.1826–01 and are periodically updated by EPA via manufacturer guidance letters.[46]

Heavy-duty engine small volume manufacturers may also be eligible for assigned DFs instead of conducting durability demonstrations.[47] Under the regulations, manufacturers with sales volumes of less than 10,000 units are eligible to use assigned DFs determined by EPA.

Because assigned deterioration factors are determined assuming the vehicle or engine is new, EPA proposes to allow small volume conversion manufacturers to use deterioration factors, proportionate to the vehicle or engine age under certain conditions. This would help create a level playing field for older vehicles and engines that have already experienced some of their expected emissions degradation. EPA proposes that conversion manufacturers are eligible to use scaled DFs for vehicles or engines that have accumulated more than 10,000 miles. EPA proposes to allow a proportionate scaling of the EPA assigned deterioration factor, if applicable, to demonstrate compliance with the intermediate and/or full useful-life standards. *See* Section IV.B.3.c.i for more detail.

3. Changes in Small Volume Manufacturer Status

If a conversion manufacturer's annual sales volume may surpass the threshold for small volume manufacturer or test group status for a given model year,[48] the conversion manufacturer must satisfy the regulatory requirements required for large volume manufacturers or test groups, even if the conversion manufacturer initially complied properly (in a previous model year) with the small volume requirements. Conversion manufacturers should be aware that this status change could result in new demonstration and notification requirements involving new testing under both the new and intermediate age programs. EPA proposes to require conversion manufacturers to report to EPA the number of conversion systems they have sold annually in an end-of year submission.

A change from small volume status to large volume status could occur in several different situations. First, if a conversion manufacturer is required to recertify a vehicle or engine (*see* Section IV.A.4.c for an explanation of recertification) after a sales volume status change, all large volume test procedures and requirements would need to be conducted prior to the issuance of the new certificate. Second, if a small volume conversion manufacturer crosses the annual sales volume threshold and becomes a large volume conversion manufacturer, the conversion manufacturer would need to update their demonstration and complete all applicable large volume requirements for the intermediate age vehicle or engine conversions which are no longer eligible for small volume manufacturer or test group.

IV. Clean Alternative Fuel Conversion Program Details

As summarized earlier in this Notice, EPA is proposing to revise the demonstration and notification procedures for clean alternative fuel conversions based on the age of the vehicle or engine to be converted. All conversion manufacturers would be required to demonstrate to EPA that the conversion satisfies technical criteria to qualify as a clean alternative fuel conversion, but demonstration and notification requirements would be different depending on vehicle or engine age. The age-specific requirements are summarized in Table IV–1 and are presented in detail below.

The age-based demonstration and notification requirements that EPA is proposing stem from both legal and practical considerations. The proposed distinctions between the demonstration required for new, intermediate age, and outside useful life vehicles and engines address the issues posed by the absence of applicable emission standards for converted vehicles and engines that have exceeded full useful life. At the same time, the proposed approach recognizes that new vehicles and engines, at the time of conversion, should resemble the certified OEM configuration from the perspective of emissions degradation and should therefore be held to the same durability and deterioration factor demonstrations required for OEM certification. Intermediate age vehicles and engines fall between the new and outside useful life categories. While useful life standards still apply, certain certification requirements are no longer suitable for aging vehicles and engines.

As with demonstration protocols, EPA believes different notification protocols are appropriate for the three age classes. The proposed notification protocols reflect the level of detail EPA has determined to be necessary for conversion manufacturers to adequately document and for EPA to review the required emissions demonstration. The proposed age-based notification system would streamline the notification process and would create a simple system that both small and large conversion manufacturers could easily understand and follow.

[44] 40 CFR 86.1838–01.

[45] 40 CFR 86.1838–01(c)(1). Manufacturers not eligible for small volume manufacturer or small volume test group status are required to follow durability procedures in 40 CFR 86.1823–01, 86.1923–08, 86.1824–01, 86.1824–07, 86.1824–08, 86.1825–01, and 86.1825–08.

[46] The current light-duty light duty and heavy-duty complete vehicles assigned deterioration factor guidance document issued pursuant to 40 CFR 86.1826(b)(1)(ii) and (b)(2)(i)(c), is available electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14285&flag=1.* The current heavy-duty engine assigned deterioration guidance letter is available electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=14183&flag=1.*

[47] 40 CFR 86.094–14, 40 CFR 86.095–14, 40 CFR 86.096–14, 49 CFR 86.098–14.

[48] Manufacturers of conversion systems for intermediate age and outside useful life vehicles would use calendar year sales volume to determine small volume manufacturer status.

TABLE IV–1—OVERVIEW OF PROPOSED PROGRAM ELEMENTS [49]

Vehicle/engine age			Conversion manufacturer requirement		Certificate of conformity	Compliance detail preamble section
Category	Applicability	Example for 2010 [50]	Demonstration	Notification		
New	MY > = current calendar year − 1.	MY 2009, 2010, 2011 and < useful life mileage.	Exhaust, Evap, and OBD testing [51].	Certification Application.	Yes	IV.A
Intermediate age	MY < = current calendar year − 2 and within useful life.	MY 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008 and < useful life mileage.	Exhaust and Evap testing [51] + OBD attestation.	Data Submission [52]	No	IV.B
Outside useful life	Exceeds useful life	MY 2000 and older or > full useful life mileage.	*See* Sec. IV.C for options.	See Sec. IV.C for options [52].	No	IV.C

A. New Vehicle and Engine Clean Alternative Fuel Conversion Certification Program

EPA proposes to require that conversions of new vehicles and engines (as defined for purposes of this preamble) [53] be covered by a certificate of conformity in order to qualify for an exemption from the tampering prohibition. EPA also proposes to allow, but not require, conversions of intermediate age vehicles and engines to qualify for an exemption from the tampering prohibition by obtaining a certificate of conformity (*see* Sections IV.A.1.b. and IV.B). Certification would satisfy the statutory tampering exemption prerequisites that the conversion is "for use of a clean alternative fuel" and that the converted vehicle "complies with the applicable standards under section 202." [54]

EPA believes that certification of clean alternative fuel conversions remains an appropriate demonstration of compliance with useful life standards for new vehicles and engines. New vehicles and engines have not yet experienced deterioration and are still likely to be representative, for purposes of emissions, of the technical condition of the vehicle or engine that the OEM used for EPA certification. Thus the certification process is suitable for and may be directly applied to new vehicle and engine clean alternative fuel conversions.

EPA also believes that a certification demonstration requirement for new vehicle and engine conversions is prudent to maintain a level playing field for OEMs and conversion manufacturers. We believe it is important to prevent the potential opportunity for an OEM to circumvent the new vehicle and engine certification process by choosing to certify and then convert a traditionally-fueled vehicle or engine rather than to certify it in an alternative fuel configuration in the first place. New vehicles represent the vast majority of clean alternative fuel conversion activity. For model year 2009, only two light duty vehicle fuel conversion certificates out of 60 were issued based on data from a vehicle that was more than one year old. EPA believes that a new vehicle and engine certification requirement would continue to cover most newly developed clean alternative fuel conversion systems and therefore would preserve existing EPA control over their technical viability and environmental performance. While new vehicle and engine clean alternative fuel conversion manufacturers would still be subject to certification requirements under today's proposal, they would benefit from reduced burden because the intermediate age compliance program (*see* Section IV.B) would allow conversion manufacturers to continue to sell their products as vehicles and engines age without renewing certificates and paying certification fees after vehicles and engines are about two years old.[55]

This proposal leaves the existing regulatory procedures for demonstration, notification, and compliance documents relatively unchanged for clean alternative fuel conversion of new vehicles and engines. The demonstration of compliance with applicable standards would use the same certification procedures required of conversion manufacturers under the existing subpart F regulations with a few technical amendments and other allowances.[56] The notification process in existing subpart F regulations would also remain unchanged for conversion of new vehicles and engines. Conversion manufacturers would continue to submit applications, including test data, certification fees, and other required information to EPA on an annual basis. The compliance document, a certificate of conformity, would also remain unchanged for conversion of new vehicles and engines.

1. Applicability

a. New Vehicles and Engines

EPA proposes to define "new and relatively-new" (as discussed above in Section I in this preamble we refer to "new and relatively-new" vehicles and engines as "new") vehicle or engine clean alternative fuel conversions as those for which the date of conversion is in a calendar year that is not more than one year after the original model year (MY) of the vehicle or engine.[57] For example, in calendar year 2010, certified conversion systems would be

[49] See Section X of this preamble for more compliance details.

[50] This example is for Light-duty Tier 2 vehicles which have a useful life of 10 years or 120,000 miles.

[51] Exhaust and Evap refers to all exhaust emission testing and all evaporative emission and refueling emission testing required for new vehicle certification, unless otherwise excepted.

[52] EPA is proposing that the compliance notification process for intermediate age and outside useful life conversion would be electronic submission of data and supporting documents.

[53] *See* footnote 4.

[54] CAA 203(a)(3).

[55] Conversion manufacturers would be able to use their certification data to qualify for a tampering exemption under the intermediate age vehicle/engine program described in Section IV.B.

[56] Technical amendment proposals are described in Section V. See section IV.B.3.c.i for a description of the proposed scaling of assigned deterioration factors for small volume manufacturers who conduct demonstration testing on a vehicle with over 10,000 miles.

[57] OEM model years are often introduced ahead of the calendar year. Thus, to calculate which conversions must be certified, subtract the original vehicle model year from the current calendar year. If the difference is one or less than one, then a certified conversion is required to qualify for the tampering exemption. If the difference is more than one, then the conversion may comply with the intermediate age or outside useful life provisions as applicable.

required for MY 2009, MY 2010, and MY 2011 vehicles or engines.

As stated previously, EPA believes that certification is an appropriate requirement for new vehicles and engines because their emissions and mileage accumulation still largely reflect the vehicle's condition at the time of OEM certification. For consumer and conversion manufacturer clarity, it makes sense to compare vehicle model year to the current calendar year. This can be accomplished by applying the formula presented in Table IV–1 above. In practice this means that certification would be required for vehicles or engines that are less than about two years old.

EPA is proposing an age threshold of less than about two years old for the new vehicle and engine certification requirement on the basis of historical conversion certification age patterns. EPA requests comment regarding whether EPA has properly identified the vehicle and engine age range for which certification is appropriate and should be required for conversions. In particular EPA requests emissions or other data to support comments suggesting a different age range than the proposed two year period.

b. Older Vehicles and Engines

Manufacturers of conversion systems for vehicles and engines that are older than the age range defined above for new vehicles and engines, but still fall within the original vehicle's or engine's useful life, may opt for certification as their demonstration of compliance with useful life standards. These systems are also eligible for the intermediate age notification program described in Section IV.B.

2. Test Groups, Engine Families and Evaporative/Refueling Families

a. Test Groups for Light-Duty and Heavy-Duty Complete Vehicles

i. Small Volume Manufacturers

In seeking to streamline the certification process for clean alternative fuel conversion manufacturer, EPA proposes to allow conversion manufacturers to combine several OEM test groups into larger conversion test groups, where the regulatory requirements of 40 CFR 86.1827–01 and 86.1820–01 are still satisfied. Test groups cannot span multiple durability groups.[58] However, all clean alternative fuel conversion manufacturers who meet the Small Volume Manufacturer criteria in 40 CFR 86.1838–01 are eligible to use EPA assigned deterioration factors.[59] By default the assigned deterioration factors define the durability group. As such, EPA proposes to use select criteria in the durability group determination, 40 CFR 86.1820–01, the test group determination, 40 CFR 86.1827–01, and other additional criteria to allow OEM test groups to be combined into a single clean alternative fuel conversion test group.

Vehicles can be placed into the same clean alternative fuel conversion test group using good engineering judgment if they satisfy the following:[60]

(1) Same OEM and OEM model year[61]

(2) Same OBD group[62]

(3) Same vehicle classification (*e.g.* light-duty vehicle, heavy-duty vehicle)

(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger

(5) Same number of cylinders or combustion chambers

(6) Same arrangement of cylinders or combustion chambers (*e.g.* in-line, v-shaped)

(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle)

(8) Same engine type (*e.g.* piston, rotary, turbine, air cooled versus water cooled)

(9) Same OEM fuel type (except otherwise similar gasoline and E85 flex fuel vehicles may be combined into dedicated alternative fuel vehicles)

(10) Same fuel metering system (*e.g.* throttle body injection vs. port injection)

(11) Same catalyst construction (*e.g.* beads or monolith, metal vs. ceramic substrate)

(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group

EPA requests comment on the proposed conversion test group criteria and what additional criteria, if any, should be considered to adequately ensure that models within a conversion test group share emissions characteristics that would be similarly affected by the conversion system being certified. EPA also requests comment on whether the data generated from a worst case EDV will adequately represent the proposed allowable fuel conversion test groups.

a. Dual-Fuel Vehicle Carry-Across Procedures for Small Volume Manufacturers

As described in Section III.G.1.c, dual-fuel vehicles cannot be certified to different standards for each fuel. However, if the vehicles would otherwise meet the test group criteria described above, the exhaust emissions test data for the new, alternative fuel from dual-fueled emission data vehicles could be carried across to vehicles which otherwise meet the test group criteria above. Test data can only be carried across if the data demonstrate compliance with the most stringent standard among the vehicles to which it is being applied. This means that for dual-fuel conversions a manufacturer would have to apply for multiple certificates if the OEM vehicles in the proposed test group combination were originally certified to different standards; however, the data acquired on the alternative fuel may be applicable to multiple certificates when the test group criteria above are otherwise met and the data demonstrate that the most stringent standard within the group is met.

ii. Large Volume Manufacturers

Large volume manufacturers must create test groups according to the regulations in 40 CFR 86.1827–01. As required by these regulations, the manufacturer must first create durability groups pursuant to 40 CFR 86.1820–01, and then divide those groups into test groups for the purposes of exhaust emissions testing.

b. Engine Families for Heavy-Duty Engines

i. Small Volume Manufacturers

In seeking to streamline the certification process and maintain consistency with the policy for light-duty vehicles, EPA proposes to allow combinations of several original OEM engine families into larger conversion engine families. Engines can be placed into the same clean alternative fuel conversion engine family using good engineering judgment if they satisfy the following:[63]

(1) Same OEM

(2) Same OBD group after 2013

[58] 40 CFR 86.1827–01.

[59] 40 CFR 86.1826–01.

[60] Of the criteria listed above, #4–#6 are from 40 CFR 86.1827–01(a) and #7–#11 are from 40 CFR 86.1820–01. To provide flexibility in combining OEM test groups, this proposal does not include the precious metal composition and catalyst grouping statistic criteria in CFR 86.1820–01.

[61] Aftermarket fuel conversion manufacturers would continue to be able to use carry-over of test results from one model year to the next if the OEM exercised such flexibility in accordance with EPA regulations.

[62] On rare occasion, an OEM test group contains multiple OBD groups. When this occurs, EPA proposes to allow the conversion test group to include the multiple OBD groups that are covered by the OEM test group.

[63] These proposed criteria are consistent with the 2009 guidance letter, CISD 09–14, which can be accessed electronically at *http://iaspub.epa.gov/otaqpub/display_file.jsp?docid=20194&flag=1.*

(3) Same service class (*e.g.* light heavy-duty diesel engines, medium heavy-duty diesel engines, heavy heavy-duty diesel engines)
(4) Engine displacements is within 15% of largest displacement or 50 CID, whichever is larger
(5) Same number of cylinders
(6) Same arrangement of cylinders
(7) Same combustion cycle
(8) Same method of air aspiration
(9) Same fuel type (*e.g.* diesel/gasoline)
(10) Same fuel metering system (*e.g.,* mechanical direct or electronic direct injection)
(11) Same catalyst/filter construction (*e.g.,* metal vs. ceramic substrate)
(12) All converted vehicles are subject to the most stringent emission standards. For example, 2005 and 2007 heavy-duty diesel engines may be in the same family if they meet the most stringent (2007) standards
(13) Same emission control technology (*e.g.,* internal or external EGR)

a. Dual-Fuel Engine Carry-Across

Heavy-duty dual-fuel engines cannot be certified to different standards for each fuel.[64] However, if the engines would otherwise meet the engine family criteria described above, the exhaust emissions test data for the new, alternative fuel from dual-fueled test engines could be carried across to engines which otherwise meet the engine family criteria above. Test data can only be carried across if the data demonstrates compliance with the most stringent standard among the engines to which it is being applied. This means that for dual-fuel conversions, a manufacturer would have to apply for multiple engine family certificates if the OEM engines in the proposed engine family combination were originally certified to different standards; however, the data acquired on the alternative fuel may be applicable to multiple certificates when the engine family criteria above are otherwise met and the data demonstrates that the most stringent standard within the conversion engine family is met.

ii. Large Volume Manufacturers

All large volume heavy-duty engine manufacturers must create engine families as set forth in 40 CFR 86.001–24.

c. Evaporative/Refueling Families

Conversion manufacturers would be required to follow the regulatory provisions for designating evaporative and refueling families. These provisions are located in 40 CFR 86.1821–01 for light-duty vehicles and heavy-duty complete vehicles and in 40 CFR 86.096–24(a)(12)–(13) for heavy-duty engines. If the clean alternative fuel conversion system continues to use the OEM evaporative/refueling emissions system in their original configurations, the conversion evaporative/refueling families will remain identical to the OEM evaporative/refueling families. If, however, the conversion requires a new evaporative/refueling system (as for pressurized fuels, such as CNG and LPG), then the conversion manufacturer may create a single evaporative/refueling family as long as the regulatory criteria for evaporative/refueling families are met. Small volume manufacturers may use EPA assigned evaporative/refueling deterioration factors in lieu of evaporative/refueling durability demonstrations.

Clean alternative fuel conversion evaporative families for dual-fueled vehicles and engines may not include vehicles and engines which were originally certified to different evaporative emissions standards.

3. Certification Demonstration Requirements

EPA proposes that certification for clean alternative fuel conversions be based on the certification procedures specified in 40 CFR part 86, subpart A, B and/or S and 40 CFR part 1065 as applicable, subject to the exceptions and special provisions described in Section III.G.1.a and Section V, if applicable.

a. Exhaust Emissions

i. Light-Duty and Heavy-Duty Complete Vehicles

The exhaust emissions testing demonstration for light-duty and heavy-duty complete vehicles would be conducted on a test group basis. The worst-case emission data vehicle from each test group would be used to demonstrate compliance with the most stringent standards represented among the OEM vehicles when they were originally certified. All exhaust certification requirements and test procedures which are required in regulations for OEM certification would be required for fuel conversion certification. Test procedures and certification requirements are currently located in 40 CFR part 86, subparts B and S.

The certification test procedures for conventionally-fueled vehicles include test cycles designed to represent a variety of "real world" driving conditions. One of these, the US06 test procedure and drive cycle, is intended to emulate high speeds, aggressive accelerations, and other typical driving patterns not captured by the FTP (Federal Test Procedure). The US06 drive cycle is required for conventionally-fueled vehicles, but alternative fuel vehicles were excepted from the current regulations.[65] It has been suggested that the US06 exhaust emissions test is valuable for confirming catalyst protection when vehicle operation results in high exhaust temperatures. EPA seeks comment about the need to add a US06 demonstration or statement of compliance with the US06 standard to the exhaust certification demonstration requirement for clean alternative fueled vehicle conversions.

ii. Heavy-Duty Engines

The exhaust emissions testing demonstration for heavy-duty engines would be conducted on an engine family basis. The worst-case emission data engine from each engine family would be used to demonstrate compliance with the most stringent standards represented among the OEM engines when they were originally certified. All exhaust certification requirements and test procedures which are required in regulations for OEM certification would be required for fuel conversion certification. Test procedures and certification requirements are currently located in 40 CFR part 86 and part 1065.

b. Evaporative/Refueling Emissions

EPA proposes to retain the evaporative and refueling emissions test procedures and requirements promulgated in 40 CFR part 86 and part 1065 as the demonstration requirement for clean fuel conversion certification. Please see the technical amendments discussed in Section V for fuel-specific amendments that apply to conversions to CNG (or LNG), LPG, or hydrogen fuels.

c. Durability Demonstration and Assigned Deterioration Factors

i. Small Volume Manufacturer Assigned Deterioration Factors

a. Light-Duty and Heavy-Duty Complete Vehicles

As noted in Section III.H.2 above, small volume light-duty and heavy-duty complete vehicle manufacturers and eligible small volume test groups are permitted to use EPA-assigned deterioration factors in lieu of exhaust and evaporative/refueling durability

[64] *See* Section III.G.1.c.

[65] 61 FR 54871 (Oct. 22, 1996).

demonstrations. If the emission data vehicle (EDV) has accrued more than 10,000 miles, we propose to allow the conversion manufacturer to utilize the scaled assigned deterioration factors described in Section IV.B.3.c below.[66]

b. Heavy-Duty Engines

For consistency with light-duty vehicles, EPA also proposes that heavy-duty engine manufacturers who are eligible to use EPA assigned deterioration factors would be permitted to use scaled assigned deterioration factors when the emission data engine has accrued more than 10,000 miles.

ii. Large Volume Manufacturer Durability Procedures

Large volume manufacturers would be required to conduct all applicable durability testing demonstrations.

d. On-Board Diagnostics

EPA believes that a fully functional OBD system is valuable in sustaining long-term emissions control and therefore proposes that the same OBD requirements that apply to OEMs would continue to apply to clean alternative fuel conversion systems. The certification demonstration would require a submission of emissions data to prove that the OBD continues to function and the Malfunction Indicator Light (MIL) illuminates at the proper thresholds as set forth in 40 CFR 86.1806–01, 86.1806–04, and 86.1806–05 for light-duty vehicles and heavy-duty complete vehicles. EPA also proposes that if an OEM heavy-duty engine was certified with an OBD requirement, the conversion should follow those requirements, unless an alternative fuel OBD requirement is otherwise excepted from the OBD regulations. Heavy-duty engine OBD requirements are promulgated in 40 CFR 86.007–17, 86.007–30, 86.010–18, and 86.010–38.

4. *Certification Notification Process*

EPA proposes a conversion certification notification process based on the OEM certification procedures specified in 40 CFR part 86, as applicable. The proposed notification requirement is intended to continue to incorporate the entire OEM certification process. If the OEM process is amended in the future, the fuel conversion certification procedures would also change, unless specifically excepted. The following is a brief overview of the current light-duty and heavy-duty complete vehicle certification process, but should not be considered an exhaustive list of all certification requirements:

1. Manufacturer requests an EPA manufacturer code and creates a data entry (Verify) account. Instructions for this are located at *http://www.epa.gov/otaq/verify/mfr-code.htm.* Manufacturers are assigned an EPA certification representative.

2. Manufacturer contacts their assigned EPA certification representative to describe the certification plan, including a discussion on how emissions durability will be demonstrated.

3. Manufacturer conducts all testing, including exhaust emission testing, evaporative/refueling emission testing, and on-board diagnostics demonstrations.

4. Manufacturer enters data in web-based data entry system (Verify) and fills out a confirmatory testing waiver request to request a place in the EPA confirmatory testing queue.

5. EPA conducts confirmatory testing based on the need to test the first vehicle from a new manufacturer, a random selection of an emission data vehicle through the computerized Verify system, the desire to test a vehicle employing new technology, or other EPA reasons as appropriate.

6. Certification fees are paid to EPA. Reduced fees may be available. *See http://www.epa.gov/otaq/guidance.htm* for instructions and forms pertaining to fee payment.

7. Manufacturer submits an application for certification according to 40 CFR 86.1843–01 and 86.1844–01. The application must contain any applicable statements of compliance or attestations[67] and an OBD approval letter from the California Air Resources Board or an EPA OBD approval letter if the vehicle will be sold only in States which have not adopted the California emissions standards.

8. If EPA testing confirms that all standards are met, based on testing at the EPA NVFEL laboratory, or based on a review of the data submitted by the manufacturer if no EPA confirmatory testing is conducted, a Certificate of Conformity is issued to the manufacturer for the appropriate fuel conversion test group and evaporative emissions family of vehicles. The certificate is valid until December 31st of the model year on the certificate.

a. Re-Certification

Conversion manufacturers who wish to renew a certificate that has expired may re-certify the same conversion group in subsequent years using the same data. To re-certify, the manufacturer would update the cover page of the application, re-enter the necessary data into EPA's on-line data submission Web site, and submit the certification fees.

5. In-Use Compliance

Clean alternative fuel conversion manufacturers are subject to in-use requirements. Many of these are described in Section III above, including warranty, defect reporting and recall requirements, as well as EPA's authority to perform in-use testing.

B. Intermediate Age Vehicle and Engine Compliance Program

EPA is proposing an alternative to certification to satisfy the compliance demonstration and notification requirements for vehicles and engines that are no longer new but still fall within their useful life.[68] The intermediate age vehicle and engine compliance program (intermediate age program) would require conversion manufacturers to demonstrate through testing that the converted vehicle or engine will continue to meet applicable standards through its useful life. Alternatively, to qualify for an exemption to the tampering prohibition, manufacturers could opt to certify conversion systems for intermediate age vehicles and engines as if they were new vehicles and engines. *See* Section IV.A.

[66] This is due in part to the Fuel Economy testing requirements which effectively limit the testing of vehicles with more than 10,000 miles.

[67] The certification process may permit several statements of compliance or attestations in lieu of test data. Some of these are found in the OEM certification regulations in 40 CFR part 86, subparts A and S and 40 CFR part 1065. In addition we are proposing attestation statements specific to conversion to a clean alternative fuel. These would include:

1. The test group or engine family converted to dual fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle was originally certified.

2. The test group or engine family converted to dual fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle was originally certified.

3. The test group or engine family converted to dual fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicles/engines are operating on the alternative fuel.

4. The test group or engine family converted to an alternative fuel has fully functional OBD systems (if the OEM vehicles or engines are OBD equipped) and therefore meet the OBD requirements in 40 CFR Part 86, subpart S or subpart A, as appropriate, when operating on the alternative fuel.

[68] The original subpart F rulemaking weighed several options for useful life determination of a fuel converted vehicle or engine, and it was determined that the useful life of the original vehicle or engine would not be extended after fuel conversion. 59 FR 48488. This proposal leaves this determination unchanged.

The proposal to create an alternative to certification for intermediate age vehicle and engine conversion systems addresses EPA's interest in creating a streamlined compliance process that is appropriate for vehicles and engines that have been subject to real-world aging. EPA does not believe certification of intermediate age vehicles and engines is necessary because they are generally no longer representative of certification vehicles, as described in 40 CFR part 86, subpart S. EPA originally developed the certification test procedures for new OEM vehicles and engines. Typical OEM vehicles delivered to EPA for confirmatory testing are recently manufactured pre-production models with about 4,000 miles of engine and emission control system stabilization mileage. No OEM vehicles with more than 10,000 miles are tested for certification.[69]

The proposed program for intermediate age vehicles and engines maintains many of the existing certification test procedures, but departs from the existing subpart F requirements in several notable areas. The demonstration of compliance with applicable standards would use the same procedures required of certified conversion manufacturers for exhaust and evaporative emissions testing.[70] However, the OBD demonstration requirement would be significantly different. Instead of requiring OBD demonstration testing as required for certification, an attestation that the OBD system is fully functional would be required to meet the OBD demonstration requirement for conversion of an intermediate age vehicle or engine.[71] The notification process would also be significantly different for intermediate age vehicles and engines. Conversion manufacturers would still submit test data, attestations, and other required information to EPA; however the application process would be significantly streamlined. Certification fees would not be assessed unless EPA updates its fees rule in the future.[72] Conversion manufacturers participating in the intermediate age program would not receive a certificate of conformity. Rather, EPA would maintain a publicly available list identifying conversion systems that have satisfied the intermediate age demonstration and notification requirements, and that therefore have qualified for the tampering exemption.

1. Applicability

Vehicles and engines would become eligible for the intermediate age compliance program when the date of their conversion is in a calendar year that is at least two years after the original model year of the vehicle or engine, *i.e.* when they are about two years old. For example, in calendar year 2010, model year 2008 and earlier vehicles and engines would be eligible for the intermediate age program.

EPA proposes that manufacturers of conversion systems for vehicles and engines that are outside their full useful life may also use the intermediate age program as a demonstration sufficient to qualify for the clean alternative fuel conversion exemption from tampering. Conversion manufacturers that choose to participate in the intermediate age program would need to demonstrate compliance with the full useful life standards, even if the vehicle or engine has surpassed its useful life in age or mileage. In that case it would not be required to generate or use deterioration factors.

2. Test Groups/Engine Families and Evaporative/Refueling Families

a. Test Groups for Light-Duty and Heavy-Duty Complete Vehicles

i. Small Volume Manufacturer Test Groups

EPA proposes that small volume manufacturers of conversion systems for intermediate age vehicles be permitted some additional flexibility in creating test groups to which the conversion is applicable. The primary difference between proposed test group criteria for the new and intermediate age programs is the elimination of the OBD group criterion under the intermediate age program. Vehicles can be placed into the same clean alternative fuel conversion test group using good engineering judgment if they satisfy the following:

(1) Same OEM and OEM model year[73]

(2) OBD still functional[74]

(3) Same vehicle classification (*e.g.,* light-duty vehicle, heavy-duty vehicle)

(4) Engine displacement (within 15% of largest displacement or 50 CID, whichever is larger)

(5) Same number of cylinders or combustion chambers

(6) Same arrangement of cylinders or combustion chambers (*e.g.,* in-line, v-shaped)

(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle)

(8) Same engine type (*e.g.,* piston, rotary, turbine, air cooled versus water cooled)

(9) Same OEM fuel type (except otherwise similar gasoline and E85 flex fuel vehicles may be combined into dedicated alternative fuel vehicles)

(10) Same fuel metering system (*e.g.,* throttle body injection vs. port injection)

(11) Same catalyst construction (*e.g.,* beads or monolith, metal vs. ceramic substrate)

(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group

EPA especially seeks comment regarding whether the 15% engine displacement criterion should apply to intermediate age vehicles and engines. EPA seeks comment on allowing additional flexibility by permitting combinations of vehicles based on any other criteria. EPA would like to receive relevant data supporting any combination suggestions.

ii. Large Volume Manufacturers

EPA proposes to allow large volume manufacturers the same test group combination flexibility as small volume manufacturers when designating intermediate age vehicle test groups. *See* Section IV.B.2.a.i for details. However, large volume manufacturers are required to conduct durability testing, as noted below.

iii. Dual-Fuel Vehicle Carry-Across

Under the proposed rule, dual-fuel vehicles which have different standards would need to create a separate submission to EPA for each OEM test group with different standards. However, as is described above in Section IV.A.2.a.i.a, test data from an emission data vehicle on the alternative fuel may be used to satisfy the demonstration requirement of multiple OEM test groups if the conversion test group criteria described above are otherwise met and the data demonstrate compliance with each standard.

[69] This is due in part to fuel economy testing regulations which limit the accrued mileage for a fuel economy test vehicle to 10,000 miles. 40 CFR 600.007–08(b)(1).

[70] The technical amendment proposals described in Section V and the proposed scaling of assigned deterioration factors described in section IV.B.3.c.i would be available.

[71] *See* Section IV.B.4 for more information about the required OBD attestations.

[72] CFR part 1027.

[73] Aftermarket fuel converters are currently permitted to use carry-over of test results from one model year to the next if the OEM exercised such flexibility in accordance with EPA regulations.

[74] Note that a functional OBD system means that it must not be disabled, there are no false MILs or false DTCs, and all readiness flags must be set.

b. Engine Families for Heavy-Duty Engines

i. Small Volume Manufacturers

EPA proposes to allow the same engine family combination criteria that are described in Section IV.A.2.b.i for clean alternative fuel conversion of new engines.

ii. Large Volume Manufacturers

EPA proposes to allow large volume manufacturers the same flexibility as small volume manufacturers when designating intermediate age heavy-duty engine families. *See* Section IV.B.2.b.i for details. However, large volume manufacturers are required to conduct durability testing.

iii. Dual-Fuel Engine Carry-Across

EPA proposes to allow the same data carry-across procedures for intermediate age dual-fuel engines described in Section IV.A.2.b.i.a.

c. Evaporative/Refueling Families

EPA proposes that evaporative family criteria under the intermediate age program remain as provided in 40 CFR part 86. If the OEM evaporative system is no longer functionally necessary (*e.g.,* conversion to dedicated CNG or LPG), then conversion manufacturers may create new evaporative conversion groups following the criteria in 40 CFR 86.1821–01 for light-duty and heavy-duty complete vehicles and 40 CFR 86.096–24(a)(12)–(13) for heavy-duty engines. Clean alternative fuel conversion evaporative/refueling families for dual-fueled vehicles cannot include vehicles that were originally certified to different evaporative emissions standards.

3. Demonstration Requirements

EPA proposes that the demonstration requirements for clean alternative fuel conversions be based on the certification procedures specified in 40 CFR part 86, subparts A, B and/or S and 40 CFR part 1065 as applicable, subject to the exceptions and special provisions described in this section, Section III.G.1.a and Section V, if applicable.

a. Exhaust Emissions

Exhaust emissions testing demonstration is conducted on a test group (light-duty) or engine family (heavy-duty) basis. The worst-case emission data vehicle or engine from each test group or engine family would be used to demonstrate compliance with the most stringent standards represented among the OEM vehicle or engines when they were originally certified. All exhaust demonstration requirements and test procedures which are required in regulations for OEM certification would be required for fuel conversion compliance. Test procedures and other requirements are currently located in 40 CFR part 86, subparts A, B, C, O, P, S and 40 CFR part 1065.

b. Evaporative/Refueling Emissions

The acceptable test procedures to demonstrate that a vehicle or engine will meet evaporative standards during normal vehicle operation, including refueling, are specified in 40 CFR part 86 and part 1065. EPA proposes that these test procedures and other requirements continue to apply for the intermediate age vehicle and engine fuel conversion program. Please see the technical amendments discussed in Section V for fuel-specific amendments which apply to conversions to CNG (or LNG) and LPG or hydrogen fuels.

c. Durability Demonstration and Assigned Deterioration Factors

i. Small Volume Manufacturers

As noted in Section III.H.2 above, small volume manufacturers and eligible small volume test groups are permitted to use EPA-assigned deterioration factors in lieu of exhaust and evaporative/refueling durability demonstrations. EPA proposes to continue this practice for purposes of evaluating conversion systems that will be applied to intermediate age vehicles and engines. In addition, EPA is proposing a new concept which would be applicable to emissions data vehicles and engines with more than 10,000 miles. EPA proposes to allow small volume manufacturers to use "scaled deterioration factors." Scaled deterioration factors would be derived using current assigned deterioration factors to determine mileage applicable deterioration factors from 10,000 miles through intermediate useful life and from intermediate useful life through full useful life.[75] Although the actual rates of emissions deterioration from 10,000 miles to intermediate useful life and from intermediate useful life to full useful life may vary, EPA may assume a linear increase of emissions with increasing mileage in order to facilitate a simple scaling of the EPA-assigned deterioration factors. In the future, EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or the rate differs by fuel type. Mathematically, a constant rate of deterioration can be expressed as:

$$\frac{\Delta Mileage}{\Delta gpm} = Constant \qquad \text{(Eq. 1)}$$

Note: This does not mean that the deterioration factor increases linearly with mileage. The equation assumes that the grams of pollutant per mile increases at a constant rate as vehicle mileage increases.

In addition to this primary assumption, EPA proposes to use these two definitions:

$$(1)\quad ADF(FUL) = \frac{FULgpm}{INITgpm} \qquad \text{(Eq. 2)}$$

$$(2)\quad SDF(FUL) = \frac{FULgpm}{MGgpm} \qquad \text{(Eq. 3)}$$

Where:

ADF(FUL) is the full useful life assigned multiplicative deterioration factor (DF).

FULgpm is the grams per mile of pollutant projected at full useful life.

INITgpm is the grams per mile of pollutant measured at the beginning of the vehicle or engine's useful life.

SDF(FUL) is the scaled full useful life multiplicative DF.

MGgpm is the grams per mile of pollutant at the actual mileage of emission data vehicle or engine.

Based on the assumption in equation 1:

$$\frac{FULMG - MG}{INITgpm - MGgpm} = \frac{FULMG - INITMG}{FULgpm - INITgpm}$$

[75] Intermediate standards only apply to those vehicles originally certified with intermediate standards.

Where:

FULMG is the appropriate full useful life mileage.

MG is the actual mileage of the emission data vehicle or engine.

INITMG is the mileage at the beginning of the useful life. Note that this value is zero for heavy-duty vehicles, since evaluation is done at the zero-hour level.

From this expression, equations 2 and 3 can be used to ultimately arrive at:

$$SDF(FUL) = \frac{FULMG - INITMG}{FULMG - INITMG - (FULMG - MG)\left(1 - \frac{1}{ADF(FUL)}\right)} \quad \text{(Eq. 4)}$$

This equation shows how the scaled full useful life multiplicative DF can be calculated using the emissions data vehicle or engine mileage and the assigned full useful life multiplicative DF.

By carrying out the same processes, scaled intermediate useful life of deterioration factors, where applicable, can be determined by the expression:

$$SDF(MID) = \frac{MIDMG - INITMG}{MIDMG - INITMG - (MIDMG - MG)\left(1 - \frac{1}{ADF(MID)}\right)} \quad \text{(Eq. 5)}$$

Where:

SDF(MID) is the scaled intermediate useful life multiplicative DF.

MIDMG is the intermediate useful life mileage.

ADF(MID) is the intermediate useful life assigned multiplicative DF, where applicable.

In the same manner, additive scaled deterioration factors could also be derived. The resulting equations are:

$$ASDF = ODF\left(\frac{MG - INITMG}{FULMMG - INITMG}\right) \quad \text{(Eq. 6)}$$

Where:

ODF is the OEM's original additive DF and ASDF is the additive scaled deterioration factor.

EPA proposes using equations 4, 5 and 6 to scale deterioration factors of vehicles with more than 10,000 miles used in the testing of clean alternative fuel conversions, for demonstration of compliance with exhaust and evaporative/refueling emissions standards. Only the derivation of the full useful life scaled additive deterioration factor is presented. However, the derivation of the intermediate useful life scaled additive deterioration factor would follow the same process.

ii. Large Volume Manufacturer Durability Procedures

a. Light-Duty and Heavy-Duty Complete Vehicles

Durability testing would be required for large volume manufacturers of clean alternative fuel conversions of intermediate age vehicles. EPA proposes that durability groups for intermediate age vehicles would be designated using the provisions set forth in 40 CFR 86.1820–01, except the durability grouping criteria for intermediate age vehicles need not include the precious metal composition and catalyst grouping statistic criteria, since they are not included in the test group criteria for clean alternative fuel conversions.

b. Heavy-Duty Engines

Durability testing would be required for large volume manufacturers of clean alternative fuel conversions for intermediate age engines.

d. On-Board Diagnostics

EPA believes the proper functioning of an OBD system is essential to ensure continued emission compliance of an aging vehicle or engine. However, EPA proposes that the demonstration of OBD compliance for intermediate age vehicles and engines may be streamlined relative to the current certification requirements. In lieu of the OBD demonstration test data requirement, EPA proposes to allow manufacturers of intermediate age clean alternative fuel conversion systems to attest that the OBD system on the converted vehicle or engine will continue to properly detect and identify malfunctions in all monitored emission-related systems or components consistent with 40 CFR part 86 OBD requirements, including any new monitoring capability to identify potential emission problems associated with the new fuel. These include but are not limited to: Fuel trim lean and rich monitors, catalyst deterioration monitors, engine misfire monitors, oxygen sensor deterioration monitors, EGR system monitors, if applicable, and vapor leak monitors, if applicable. The manufacturer would not be allowed to alias, remove, or turn off any applicable original OBD system monitor. Furthermore the malfunction indicator light system would be required to continue to function properly and not display an illuminated Malfunction Indicator Light unless system indicators or emission thresholds are truly being exceeded. EPA would also require readiness flags to be properly set for all monitors that identify any malfunction for all monitored components.

Additionally, EPA seeks comment on whether a readiness flag demonstration is appropriate for intermediate age vehicles. Such a demonstration could involve the same process proposed as "Option 3" demonstration for vehicles and engines outside of useful life. *See* Section IV.C.3.b for more details.

4. Notification Process

For intermediate age clean alternative fuel conversions EPA proposes that converters complete and submit emission data vehicle information, test data, compliance statements and all other appropriate information using an electronic data submission form and process. EPA would provide information about the process through its Web site and other information dissemination mechanisms.

EPA would require the conversion manufacturer to enter information about the emission data vehicle or engine, emission results from the exhaust and evaporative emissions testing, including any permissible carry-over data, applicable exhaust and evaporative emissions standards and deterioration factors, and the OEM test groups or engine families and evaporative/refueling families for which the conversion system is intended. In this submission, EPA would allow conversion manufacturers to use the appropriate exhaust and evaporative emissions scaled deterioration factors for vehicles and engines with greater than 10,000 miles as described in Section IV.B.3.c.i to demonstrate that the converted vehicle meets the same standards to which the OEM vehicle or engine was certified.

The intermediate age program notification requirements would also include submission of any required compliance statements and other supporting documents such as an example label and packaging information, warranty provisions, and maintenance requirements. The specific set of necessary compliance statements will depend on the vehicle or engine category, the applicable standards, the alternative fuel type, and other factors.

The intermediate age vehicle and engine notification process would enable conversion manufacturers to submit statements of compliance or attestations instead of submitting test data for certain system features. Some of these compliance statements are found in the OEM certification regulations in 40 CFR part 86, subparts A and S and 40 CFR part 1065. In addition we are proposing attestation statements specific to conversion to a clean alternative fuel. These would include:

1. The test group or engine family converted to dual-fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle or engine was originally certified.

2. The test group or engine family converted to dual-fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle was originally certified.

3. The test group or engine family converted to an alternative fuel has fully functional OBD systems (if the OEM vehicles are OBD equipped) and therefore meets the OBD requirements in 40 CFR part 86, Subpart S when operating on the alternative fuel.

4. The test group or engine family converted to dual fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicles or engines are operating on the alternative fuel.

5. The test group or engine family converted to an alternative fuel use fueling systems, evaporative emission control systems, and engine powertrain components that are compatible with the alternative fuel and that are designed with the principles of good engineering judgment.

EPA proposes that this information would be submitted electronically in a format specified by the Administrator. If the test results meet both the intermediate and full useful life standards, after applying the deterioration factors (*see* Section IV.3.c.i), all supporting documents are included, and all compliance statements are attested, then the conversion manufacturer may submit the test data form to EPA.

EPA will periodically update its list of conversion systems that have satisfied EPA demonstration and notification requirements. The exemption from the tampering prohibition is void *ab initio* if the conversion manufacturer fails to meet all of the requirements for the program. This is the case even if a submission has been made and the conversion system has been publicly posted.

a. Previously Certified Clean Alternative Fuel Conversion Systems

EPA proposes to allow manufacturers who have previously certified conversion systems for either new or intermediate age vehicles or engines to move those systems into the intermediate age program by using the intermediate age compliance process described above. The manufacturer would not need to generate new data but rather could re-submit the same data previously used for certification. The transfer option would apply only to vehicles/engines that meet intermediate age applicability criteria and that fall within the identical test group and evaporative family as those covered by the conversion certificate. Manufacturers who transfer previously certified conversion systems to the intermediate age compliance program would no longer need to renew the certificate each year. Once transferred, the conversion system would no longer be listed as certified but rather would appear on EPA's list of conversion systems that are compliant for intermediate age vehicles.

5. In-Use Compliance

Clean alternative fuel conversion manufacturers are subject to in-use requirements. Many of these are described in Section III above, including warranty, defect reporting and recall requirements, as well as EPA's authority to perform in-use testing.

C. Outside Useful Life Program

As discussed in Section II, vehicle and engine emission standards established under the CAA apply not only at the time of production but also until the vehicle or engine reaches an age or usage threshold known as "full useful life." EPA regulations defining useful life are found in 40 CFR part 86, subpart S. Once a vehicle or engine has exceeded the useful life threshold there is no longer a statutory or regulatory obligation to comply with the applicable standard. However, the prohibition against tampering in section 203(a)(3) still applies to vehicles and engines outside their useful life. Thus, it is important to provide a program that enables converters of older vehicles and engines to use the clean alternative fuel tampering exemption, provided that all requirements of the regulations are satisfied. We are proposing such a program through which manufacturers of clean alternative fuel conversion systems for outside useful life vehicles and engines can qualify for an exemption in order to avoid violating the tampering prohibition.

The absence of an applicable section 202 standard for vehicles and engines outside their useful life necessitates a different demonstration requirement than the demonstration of compliance with the applicable section 202 standard that we are proposing for conversion of vehicles and engines still within their useful life. There are several possible approaches to a demonstration that would help assure that outside useful life conversions are consistent with the CAA prohibition on tampering and do not cause environmental degradation. EPA intends to finalize a single demonstration requirement for outside useful life vehicles and engines but we are seeking comment on three options described below. EPA requests comment on all aspects of the outside useful life demonstration options and especially

on the relative advantages and disadvantages of each of the options with regard to clarity of what would be required, ability of conversion manufacturers to satisfy the demonstration requirement, quality of information EPA would receive to evaluate emissions performance and durability, and enforceability. Please note that while the demonstration requirement would differ among the three options, all other elements of the outside useful life program would be the same. The notification process would be the same under all options, as would the public listing of conversion systems qualifying for EPA-compliant status, much like the list that would be maintained for intermediate age vehicle and engine conversion systems. Also, under all options, the exemption from the tampering prohibition is void *ab initio* if the conversion manufacturer fails to meet all of the requirements for the program. This is the case even if a submission has been made and the conversion system has been publicly posted.

1. Applicability

Clean alternative fuel conversion of vehicles and engines that have exceeded their useful life are eligible for the outside useful life program. As vehicle and engine technologies have advanced and changed, so have the regulatory definitions for useful life. Please refer to Section II.B for current useful life references.

Manufacturers of conversion systems for outside useful life vehicles may also qualify for exemption from the tampering prohibition through the intermediate age vehicle and engine compliance program. *See* Section IV.B.

EPA requests comment on whether to establish a subcategory of outside useful life vehicles and engines that reach the applicable mileage threshold for outside useful life status before they reach the applicable age threshold in years (*see* Section II.B for discussion of useful life). The reason to consider establishing a subcategory of "younger" outside useful life vehicles and engines that might be subject to a demonstration requirement much like the intermediate age requirement is that the on-road fleet will include both inside- and outside-useful life vehicles/engines of the same model year and test group/engine family. This presents a potential opportunity for misapplication and inappropriate marketing of conversion systems developed for outside useful life vehicles or engines. These outside useful life conversion systems could be inappropriately marketed and misapplied to vehicles and engines that are still within useful life. This type of inappropriate marketing and misapplication presents practical challenges for enforcement.

a. Outside Useful Life Subcategory Option

The outside useful life subcategory option would create two subcategories of outside useful life vehicles and engines. One subcategory would include vehicles and engines that have achieved outside useful life status because of their age in years. For this subcategory of vehicles and engines, EPA is soliciting comment on three demonstration options described in Sections IV.C.3.A, B, and C. A second subcategory of outside useful life vehicles or engines would include those that have achieved outside useful life status because of their mileage, but that have not yet reached the useful life age threshold in years. An example of a vehicle in the second subcategory would be a light duty vehicle with 125,000 miles that is five years old. This vehicle would have exceeded its useful life only because of its mileage. EPA is seeking comment on whether, for purposes of achieving exemption from the tampering prohibition for clean alternative fuel conversions, it is reasonable to establish a subcategory of outside useful life vehicles that have exceeded the useful life mileage threshold but that are still young in years. EPA further requests comment as to whether manufacturers of conversion systems for this subcategory of vehicles and engines should be required to satisfy a different demonstration requirement than would be required for conversion of vehicles/engines in the "old by years" outside useful life subcategory. Specifically, EPA requests comment about whether to establish the Option 2 demonstration requirement described in Section IV.C.3.a., below, for this subcategory of vehicles/engines, regardless of the demonstration option that is applied to the other outside useful life vehicles and engines (those that have qualified by years alone, or by years and mileage).

2. Test Groups, Engine Families, and Evaporative/Refueling Families

EPA proposes that the same requirements and criteria for test groups, engine families, and evaporative refueling family designations as are proposed for intermediate age vehicles and engines would also apply to outside useful life vehicles and engines. *See* Section IV.B.2.

3. Demonstration Requirements

As stated above, there are several possible approaches to a demonstration that would satisfy EPA's interest in assuring that conversion of vehicles and engines beyond their useful life are for the purpose of conversion to a clean alternative fuel and do not cause environmental degradation. EPA is seeking comment on the three options below. All three options would require a demonstration that the conversion is technically viable and will not increase emissions; however, the means by which the conversion manufacturer could make that demonstration differs among the three options. EPA intends to finalize a single demonstration requirement, unless two subcategories of outside useful life vehicles are established in the final rule, in which case, EPA may finalize two demonstration requirements, one for each subcategory of outside useful life vehicles.

A. Option 1

Manufacturers of conversion systems for outside useful life vehicles and engines would satisfy the demonstration requirement by submitting to EPA a detailed description of the conversion system. The submission would need to provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to sustain acceptable emission levels in the intended vehicle or engine. Required technical information would include but not be limited to a complete characterization of exhaust and evaporative emissions control strategies, and specifications related to OBD system functionality. EPA would audit the submission and could require the conversion manufacturer to supply additional information, including test data, to support the claim that the technology involves good engineering judgment that is being applied for purposes of conversion to a clean alternative fuel.

Examples of the kind of information EPA would expect to be included in the demonstration could include test data, component or part specifications, technical descriptions or diagrams, and any other information necessary for EPA to evaluate the technical viability of the conversion system and the use of good engineering judgment in its design, such as information concerning:

Exhaust Control System: The original engine controller, sensors, actuators, catalysts and other emission control components would be connected and functional, and actively monitored by the OBD system.

Evaporative Control System: The alternative fuel system would be leak free and utilize materials compatible with the alternative fuel. Dual-fuel and flex-fuel vehicles would retain the components and the functionality of the OEM evaporative emission control system. For dual-fuel and flex-fuel systems the evaporative emission control system would purge the evaporative emission canister in a manner identical to the OEM designed purge system when the vehicle is operating on the alternative fuel.

Fuel Delivery System: The alternative fuel delivery system would employ technology that is at least equivalent in sophistication to the OEM fuel delivery system. For example, conversions of engines with multiple port injectors would need to employ alternative fuel systems with multiple port injectors; engines with throttle injection would need to use alternative fuel systems with throttle injection; OEM carbureted engines would be able to use alternative fuel systems with central air mixers. Conversions of OEM vehicles with closed loop feedback fuel control systems would be expected to have similar closed loop control systems to maintain stoichiometric air/fuel control. Acceptable fuel control could also be achieved by using a secondary electronic control unit which adjusts fuel injector pulse width based on existing sensor inputs and on the alternative fuel's properties. Good engineering design would preclude the use of driver actuated controls for engine starting or fuel adjustment, other than for selecting the fuel type for a dual-fuel vehicle.

Durability: A discussion of the durability of the alternative fuel system would be necessary to support a good engineering judgment determination. The conversion to a clean alternative fuel should not increase the deterioration rate of the exhaust or evaporative emission system components. Fueling system components whose material is known to prematurely deteriorate due to the alternative fuel's properties would need to be upgraded.

OBD: Good engineering judgment dictates that vehicles equipped with OBD systems produce no false MILs or diagnostic trouble codes during normal operation, nor may there be any modifications that prevent OBD readiness flags from being properly set while operating on the alternative fuel. The OBD system must properly detect and identify malfunctions in all monitored emission related powertrain systems or components including any new monitoring capability necessary to identify potential emission problems associated with the alternative fuel.

B. Option 2

Manufacturers of conversion systems for outside useful life vehicles and engines would satisfy the demonstration requirement by conducting one of the following vehicle emissions testing protocols and submitting the results to EPA:

1. The manufacturer must submit data demonstrating that the vehicle or engine meets the exhaust and evaporative emissions standards that were applicable to the original vehicle within its defined useful life. This would be accomplished by following the demonstration requirements described for the intermediate age vehicle program (*see* Section IV.B).

2. The manufacturer must submit data from two sets of all the exhaust and evaporative/refueling testing applicable to alternative fueled vehicles and engines set forth in 40 CFR part 86 and part 1065, with the first test conducted before conversion and the second test after conversion. The data must demonstrate that emissions have not increased after conversion. The emission data vehicle(s) or engine(s) would need to be set to the manufacturer's tune up specification before the first test, and, apart from what is required of the normal conversion procedure, no additional adjustments to the vehicle would be allowed between the first and second set of tests.

The demonstration requirement under this option would also include a description of the OBD compliance strategy and a description of the good engineering judgment and technical information.

C. Option 3

Manufacturers of conversion systems for outside useful life vehicles and engines that were equipped with OBD systems in their OEM configuration would satisfy the demonstration requirement by submitting all materials required for the Option 1 demonstration requirement, along with a report containing OBD checks following conversion to the alternative fuel. This report must be based on the OBD information from the emission data vehicle or engine that is selected to represent the outside useful life program test group or engine family. Under EPA's proposed rule, conversion manufacturers must satisfy the good engineering judgment description in Section III.B of this proposal.

The OBD demonstration would involve using an OBD scan tool to clear all readiness codes (set codes to "not ready"), driving the vehicle to trigger all codes to be set to ready, and then using an OBD scan tool to interrogate the OBD system.

Under Option 3, in addition to satisfying all requirements for good engineering judgment, clean alternative fuel converted vehicles and engines would be considered compliant if they pass the testing prescribed in 40 CFR 85.2222, except that § 85.2222 (c)(2) does not apply, and document this by means of a printable report from the OBD scan. If necessary, the evaporative emission readiness monitor may remain unset for conversions in which the original evaporative emissions system is no longer functionally necessary.

If not included in the OBD scan tool printout, the vehicle information number (VIN) would need to be provided with the scan tool report. 40 CFR 85.2222 provides for a test procedure which checks the status of OBD readiness monitors, checks to determine if the OBD MIL is functional (bulb check), checks for commanded-on MIL illumination, and if the MIL is commanded-on, the scan tool records all DTCs (diagnostic trouble codes). Any scan tool capable of collecting the information required by 40 CFR 85.2222 is considered acceptable under this option.

4. Notification Process

Manufacturers of outside useful life conversion systems would use the same notification procedures to submit the required information as those proposed for the intermediate age vehicle and engine compliance program (*see* Section IV.B). The notification submission would include documentation of the required demonstration as well as labeling information and all appropriate attestation statements.[76]

D. Alternate Registration Approach for Newer Outside Useful Life Vehicles and Engines

EPA is requesting comment on an alternative approach that would be applicable to vehicles and engines that exceed the useful life threshold in mileage before they reach the threshold in years. An example of this type of vehicle would be a 2005 Dodge Caravan with 125,000 miles. Typically, an average 2005 model year Dodge Caravan would be driven 15,000 miles per year, and would have only 75,000 miles on the odometer in 2010, which would still

[76] The attestation statements to be reviewed and signed for the outside useful life program are identical to the attestation statements required for the intermediate age vehicle and engine compliance program. *See* Section IV.B.4.

be within useful life. These relatively new outside useful life (NOUL) vehicles and engines are distinguishable from those still within useful life only by checking the odometer. EPA is concerned that conversion system manufacturers might choose to forego the testing and compliance demonstrations required for the new and intermediate age vehicles and engines, and would instead register a conversion system for use on NOUL vehicles and engines only. However, EPA fears that conversion systems registered for NOUL vehicles and engines would be marketed to consumers of conversion systems for all vehicles of the same model year, regardless of their mileage. It would be difficult for EPA to monitor whether these conversion systems were ultimately installed only on outside useful life vehicles, and also difficult for conversion system installers and consumers to distinguish between conversion systems built for identical model year and model vehicles, where the only difference is that one conversion system is registered for use only on vehicles with mileage greater than useful life, and the other is registered for installation on all vehicles of the appropriate model year and model.

EPA is seeking comment on an approach under which the requirements for registration of conversion systems for NOUL vehicles and engines would be based on registration of intermediate age vehicles and engines of the same test group/engine family, or back-to-back testing. Under this approach for NOUL vehicles and engines, if the first option is taken, consumers and installers would be able to identify the appropriate registered conversion system by matching model year and model, without regard to the vehicle's mileage. We would expect the vast majority of conversion system manufacturers would take this option because they will wish to sell the same conversion system to intermediate age vehicle owners, and this one-size-fits all approach is cost-effective. We are providing the second option for conversion system manufacturers who may not be able to locate a suitable test vehicle that is still subject to the standards, or who plans to manufacture a conversion system for a targeted high mileage population. Under the second option, the conversion system supplier would need to perform back-to-back emission testing to demonstrate that the conversion does not degrade the performance of the emission control system. This approach is designed to be efficient for the converter but would prevent the type of gaming described above, would provide a clearer choice for conversion system installers and consumers, and would make enforcement of these new requirements easier, benefitting responsible manufacturers and installers. This approach would not increase the burden on the vast majority of conversion system manufacturers because it is designed for testing efficiency, and EPA anticipates that most conversion system manufacturers would choose to find a test vehicle that is still within its useful life and go ahead with either the certification demonstration or the intermediate age demonstration option in order to maximize market coverage for products designed for a given model and model year of vehicle and engine.

1. NOUL Vehicles and Engines Subcategory

a. Applicability

The NOUL approach would apply to vehicles and engines that exceed the useful life threshold in mileage before they reach the threshold in years.

b. Demonstration Requirements

Under the NOUL approach, manufacturers of conversion systems intended for NOUL vehicles or engines would be required to follow the same registration requirements and procedures that are established for intermediate age vehicles and engines in order to gain an exemption from the prohibitions in CAA section 203(a), or conduct back-to-back testing. In brief, the conversion system manufacturer would have two testing options for NOUL vehicles. Under the first option, the manufacturer would be required to locate a test vehicle that is still within useful life, in terms of both miles and years. The manufacturer would demonstrate that the inside-useful life test vehicle complies with applicable standards by using the same test procedures as those required of intermediate age conversion system manufacturers. The conversion system manufacturer would also perform the intermediate age vehicle and engine OBD compliance demonstration to prove continued compliance with OBD requirements and provide an attestation that the OBD system remains fully functional. All other requirements of the intermediate age vehicles and engines program would apply to this subcategory. Where a conversion system manufacturer has already registered a conversion system for intermediate age vehicles and engines for specific model years and models, that registration would also apply to NOUL vehicles and engines. Under the second option, the conversion system manufacturer would perform two tests on a representative NOUL vehicle or engine using the Federal Test Procedure. The first test would be with the fuel for which the NOUL vehicle or engine was originally certified and prior to installation of the conversion system. The second test would be performed after the conversion system is installed and using the alternative fuel. The conversion system would qualify for the tampering exemption provided that the second test shows emissions that are equal to or less than the emissions from the first test, and all other registration requirements for the outside useful life program are met.

V. Technical Amendments

EPA is proposing several technical amendments to 40 CFR part 86, subpart S which are applicable to the exhaust and evaporative emission testing requirements for vehicles using gaseous alternative fuels. The purpose of these amendments is to allow flexibility in determining compliance with EPA non-methane organic material (NMOG) standards for vehicles, and also to allow statements of compliance in lieu of test data for meeting exhaust emission standards for formaldehyde (HCHO), and evaporative emissions. For purposes of this regulation, compressed natural gas (CNG) or liquefied natural gas (LNG), liquefied petroleum gas (LPG), or hydrogen fuels are eligible for the technical amendments described below.

EPA is seeking comment whether there are other test procedures in 40 CFR part 86 or part 1065 which should be updated to address concerns specific to certain alternative fuels.

A. Exhaust Emission Technical Amendments

NMHC Multiplicative Adjustment Factor—CFR section 86.1810–01(p) allows use of a multiplicative factor to convert non-methane hydrocarbon (NMHC) exhaust emissions to an equivalent NMOG result to demonstrate compliance with NMOG standards. Under current regulations, use of a multiplicative factor, such as the 1.04 value presented in 86.1810–01(p), is only applicable to gasoline fueled vehicles. At present, EPA regulations require hydrocarbon exhaust emission measurements from fuel types other than gasoline or diesel to use the California Air Resources Board NMOG speciation procedures. The speciation procedures are more expensive and

significantly more time consuming than a simple measurement of NMHC.

EPA proposes to amend 86.1810–01(p) to allow use of multiplicative factors that will permit a compliance demonstration with NMOG standards to be determined by measuring NMHC from vehicles fueled on CNG (or LNG), LPG, or hydrogen, and converting those measurements to an equivalent NMOG result by applying a multiplicative adjustment factor.

The multiplicative adjustment factors must be based on data and use of such factors must be approved in advance by EPA.

HCHO Compliance Statement—CFR section 86.1829–01(b)(1)(iii)(E) allows vehicle manufacturers to submit a statement of compliance in lieu of submitting HCHO test data to demonstrate compliance with HCHO exhaust standards for vehicles tested with gasoline or diesel. EPA proposes by technical amendment to allow such flexibility for CNG (or LNG), LPG, and hydrogen. Similar to what is currently required in 86.1829–01, manufacturers using CNG (or LNG), LPG, or hydrogen fuels may optionally make a statement of compliance for meeting HCHO standards if they have received approval to measure NHMC in lieu of actual NMOG.

B. Evaporative Emission Technical Amendments

1. Evaporative Emissions, Running Loss, Refueling Loss Compliance Statement

EPA is proposing to amend 40 CFR 86.1829–01(b)(2)(i) to allow waiver of evaporative emission reporting requirements, including running loss and refueling loss, and allow compliance with the requirements in 86.1811–04(e) for CNG (or LNG), LPG, or hydrogen fuels by making a compliance statement in the application for certification. 86.1829–01(b)(2)(i) already provides for allowing a compliance statement in lieu of submitting data to demonstrate compliance with evaporative emission standards in 86.1811–04(e). EPA has received inquiries about other types of gaseous fuels and this amendment simply clarifies that manufacturers using other hydrogen fuels may qualify for an evaporative emission statement of compliance. Compliance statements do not alleviate the OEM or aftermarket fuel converter from complying with evaporative emission, running loss and refueling standards in 86.1811–04(e). Compliance statements are expected to be supported by development testing data or other engineering data.

The rationale for allowing compliance statements for evaporative emission, running loss, or refueling emission requirements is based on the fact that gaseous fuel systems must be a closed fueling system, and therefore the expectation is that they have zero emissions. Allowing a statement of compliance for LPG refueling emissions is contingent that the LPG fuel tank has no open vent (sometimes referred to as an "outage" valve) during the refueling operation.

The flexibilities described above for evaporative emissions are consistent with EPA regulations published in the **Federal Register**, Volume 59, No. 182, September 21, 1994—Standards for Emissions From Natural Gas-Fueled and Liquefied Petroleum Gas-Fueled Motor Vehicles and Motor Vehicle Engines, and Certification Procedures for Aftermarket Conversions, but not explicitly incorporated in 40 CFR part 86, subpart S. Adding these technical amendments to section 86.1829–01(b)(2)(iv) will provide clarity to EPA regulations for OEM manufacturers and aftermarket fuel converters desiring to certify vehicles on gaseous fuels.

VI. Environmental Effects

As in the original subpart F rulemaking, 59 FR 48488 (September 21, 1994), the primary purpose of this proposal is to maintain emissions performance and air quality while removing a potential barrier to the commercial production of clean alternative fuel conversion systems. The Agency has not attempted to quantify the environmental effects of today's proposal because the goal of this rulemaking is to preserve environmental benefits from existing EPA vehicle and engine standards by creating a clear, legal pathway for clean alternative fuel conversion while maintaining existing emissions control levels. Therefore the Agency's best assessment of environmental impacts due to this rulemaking is that the environmental effects are at worst, neutral.

VII. Associated Costs for Light-Duty and Heavy-Duty Complete Vehicles

The cost associated with achieving a regulatory exemption from tampering for clean alternative fuel conversion under this proposal is expected to be less than the current cost of compliance. The amount of cost reduction will vary based on conversion technology, fuel type, vehicle or engine age, applicability, conversion manufacturer preference, and the manufacturer's annual sales volume. The current baseline cost estimates are summarized in Section VII.A below. Additionally, there are two vehicle-age dependent cost estimates summarized in Section VII.B and VII.C. for certified conversions (VII.B) and intermediate age vehicle conversions (VII.C).

The baseline and projected costs will also depend on the original vehicle or engine fuel and on the specific clean alternative fuel to which the vehicle is being converted. This cost analysis is intended to apply to conversions to any fuel. Some test procedures are not required for either dedicated CNG or LPG or dual-fuel gasoline/CNG or dual-fuel gasoline/LPG. Since more than 98% of the alternative fuel conversion certificates issued by EPA in 2007 and 2008 were for these types of conversions, EPA conversion requirements or testing exemptions which are specific to CNG and LPG are noted in a separate section. However, any description in this section which is not specified as applying to CNG or LPG specifically should be assumed to apply to all conversion fuels.

The current (baseline) and projected costs also depend upon the conversion manufacturer's annual sales volume. Every current conversion manufacturer has sales volumes low enough to be eligible to use Small Volume Manufacturer certification procedures. EPA has no indication that manufacturers in this industry are approaching the eligibility limits of small volume status; therefore, this cost analysis will only describe baseline and projected costs for small volume.[77] If sales volumes were to increase such that manufacturer(s) surpassed small volume thresholds, EPA expects costs for large volume manufacturer fuel conversion compliance to remain unchanged or to decrease from the current (baseline) large volume manufacturer fuel conversion compliance costs.

In addition to testing costs and fees, cost estimates will include costs associated with creating applications for certification and submitting test data to EPA. EPA also analyzed the costs associated with confirmatory testing requirements at EPA. These costs include preparing a vehicle to test at the EPA, and shipping the vehicle to the EPA laboratory for testing. All hourly wage data for conversion manufacturer labor is based on the Bureau of Labor and Statistics.[78] All conversion manufacturers reported that a senior manager is conducting testing oversight and application preparation, so the labor rate for all conversion

[77] 40 CFR 86.1838–01.

[78] For electronic access to the Bureau of Labor and Statistics Data, *see http://www.bls.gov/oes/2008/may/oes_nat.htm#b11-0000.*

manufacturer labor is consistent across tasks. Engineering managers are reported to earn an average of $57.97 per hour according to a May 2008 report by the Bureau of Labor and Statistics.[79] EPA has applied a suggested 100% labor overhead cost to all conversion manufacturer labor costs. In addition, EPA typically applies a 6.5% general and administrative overhead cost to all costs. Technology research and development costs were not considered in this analysis because these costs are not expected to change as a result of this rulemaking.

In general, conversion manufacturers try to apply one set of test data to as many vehicle makes and models as EPA will allow in order to minimize testing costs. Because costs can be scaled when certifying multiple test groups and/or multiple evaporative/refueling families, and conversion manufacturers each have different testing and compliance strategies and different target market plans, this analysis will derive the current cost of compliance (baseline costs) for converting vehicles based on the assumption that costs can be scaled when certifying multiple test groups and/or multiple evaporative/refueling families. The scaling factors were determined by the following applicable ratios: (1) Number of OEM exhaust test groups to number of OEM certificates and (2) number of OEM evaporative/refueling families to number of OEM certificates. This allowed EPA to create a scaled unit cost for each certificate which adequately represents that manufacturers apply test data to multiple certificates. To create a real-world example, and allow a clear comparison of baseline versus projected costs of the proposed programs, this cost analysis ultimately compares the cost of fuel conversion for four OEM certificates after applying all appropriately scaled unit costs. This same logic was then used to derive the approximate cost of compliance for the vehicle fuel conversion of four OEM certificates under the proposed regulations, as described previously in this preamble.

A. Baseline Costs (Cost of Current Compliance)

Baseline costs will be derived by first determining the cost of one certificate without any scaled costs. These costs would be applicable if a conversion manufacturer chose to convert vehicles represented by only one OEM certificate. This is rarely done in practice because conversion manufacturers choose to take advantage of using one set of test data to apply to multiple certificates.

Next the baseline cost of one certificate will be calculated assuming the conversion manufacturers choose to take advantage of the application of data to multiple certificates. Average scaled costs are calculated on a unit basis of one certificate with scaled costs.

Lastly, EPA calculated the baseline cost of converting vehicles represented by four OEM certificates. This is done to create a real-world example which allows a clear comparison for the cost reductions created by the changes proposed under this NPRM.

1. Costs of One Certificate Without Scaling Costs

Several aftermarket conversion manufacturers as well as an independent test lab were contacted to estimate the current aftermarket fuel conversion certification costs under 40 CFR, part 85 subpart F. The basic certification testing requirements included: (a) Demonstration of compliance with exhaust emissions on a test group basis: One FTP75 test and CO, NO_X, and NMHC analysis; HCHO and NMOG speciation; one HFET NO_X test; (b) Demonstration of compliance with evaporative/refueling emissions on an evaporative/refueling family basis: Hot soak, canister purge and 2 or 3 day evaporative emissions tests; and (c) Compliance with the Federal OBDII demonstration tests which is generally done at the Federal level on the same basis as the exhaust test group. Lodging, labor and general and administrative costs are appropriated to each requirement category in order to provide a clear examination of costs under the proposed programs.

a. Costs Associated With Exhaust Emission Testing (Test Group Basis)

All estimated independent test lab costs associated with exhaust emissions testing are listed in Table VII.A–1 and Table VII.A–2 below.

TABLE VII.A–1—EXHAUST EMISSIONS TESTING COSTS TYPICALLY INCURRED AT INDEPENDENT TEST LABS

	Average costs
Coast Down Coefficient Determination	$360.00
One FTP75 Test and CO, NO_X, NMHC Analysis	1,116.67
(NMOG Speciation)—Aldehydes and Ketones	1,500.00
(NMOG Speciation)—Alcohols	250.00
One HFET NO_X Test	430.00
Exhaust Independent Test Lab Billable Labor Costs	702.50
Total Exhaust Independent Test Lab Costs	4,359.17

[79] For electronic access to the Bureau of Labor and Statistics Data, *see http://www.bls.gov/oes/2008/may/oes_nat.htm#b11-0000.*

TABLE VII.A–2—TOTAL ESTIMATED EXHAUST EMISSIONS TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE

[No scaling applied]

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)
Total exhaust independent test lab costs	$4,359.17
Total exhaust Mfr testing oversight labor costs (including 100% labor overhead)	1236.69
Lodging	280.00
Subtotal	5875.86
6.5% G & A	381.93
Total Cost for Exhaust Tests	6,257.79

b. Costs Associated With Evaporative/ Refueling Emission Testing (Evaporative/Refueling Family Basis)

TABLE VII.A–3—TOTAL ESTIMATED EVAPORATIVE EMISSIONS TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE

[No scaling applied]

Total evap independent test lab costs	$5,980.00
Total evap Mfr testing oversight labor costs (including 100% labor overhead)	.....
Lodging	.....
Subtotal	5,980.00
6.5% G & A	388.70
Total Cost for Evap Tests	6,368.70

c. Costs Associated With OBDII Demonstration Testing (Test Group Basis)

TABLE VII.A–4—TOTAL ESTIMATED OBD DEMONSTRATION TESTING COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE

[No scaling applied]

Total OBD independent test lab costs	$16,325.00
Total OBD Mfr testing oversight labor costs (including 100% labor overhead)	7,265.57
Lodging	1,120.00
Subtotal	24,710.57
6.5% G & A	1,606.19
Total Cost for OBD Demo Tests	26,316.76

d. Other Certification Costs

TABLE VII.A–5—OTHER CERTIFICATION ESTIMATED COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE

[No scaling applied]

Travel to oversee testing at independent test lab	$1,000.00
Shipment of vehicle to independent test lab	4,000.00
Prep and shipment of vehicle to EPA for confirmatory tests	6,200.00
Preparation of Application for certification labor costs (including 100% labor overhead)	4,637.60
Subtotal	15,837.60

TABLE VII.A–5—OTHER CERTIFICATION ESTIMATED COSTS FOR FUEL CONVERSION OF ONE OEM CERTIFICATE—Continued

[No scaling applied]

6.5% G & A	1,029.44
Total Costs for Travel, Vehicle Shipments, and Application Preparation	16,867.04

e. Certification Fees

Full certification fees for highway vehicles are $34,849 for 2009.[80] However, there is a reduced fee program which allows most conversion manufacturers to pay far less. The reduced fee is calculated based on sales volume and value added.[81] The formula can be described as 1% * number of units * retail value added. Because most conversion manufacturers sell less than 50 vehicle conversions per test group and conversion kits vary greatly in price, for purposes of this estimate, EPA is using 50 units and a retail value of $8,000. Therefore, for this cost estimate the baseline certification fees are estimated at $4,000.

The current base cost of compliance for one certificate, including all testing, associated labor, overhead, and general and administrative costs if costs are not scaled due to test group, OBD, or evaporative/refueling family combinations is about $59,810. Certification fees are not included in this total because they are variable by sales volume for manufacturers that are eligible for reduced fees.

2. Cost of One Certificate When Testing Costs Are Scaled for Multiple Certificate Groups

OEM test groups, evaporative/refueling families, and Federal OBD approvals are combined to form a unique certificate. These same test groups and evaporative/refueling families, when taken separately, can often apply to multiple certificates. Here, EPA examined 418 model year 2007 light-duty certificates to determine appropriate scaling factors for exhaust Test Groups, Evaporative/Refueling Families, and OBD demonstrations tests. EPA reviewed model year 2007 data because these data were complete, readily available, and deemed to be representative. Of those 418, there were 335 unique test groups each with exhaust emission data, meaning the OEMs used 335 sets of exhaust test data to apply for 418 certificates. The ratio represented here (335/418 = 0.8) provides an approximate scaling factor which can be applied to the cost of one set of exhaust emissions data to determine the average unit cost per certificate for exhaust emission testing. Of those same 418 certificates there were only 189 evaporative/refueling families, therefore the average scaling factor for evaporative/refueling family testing costs (189/418 = 0.45) times the cost for one set of evaporative emissions testing represents the average unit cost per certificate for evaporative/refueling emissions testing. For the purposes of this cost estimate we assumed that all Federal OBD approvals for conversion manufacturers were done in parallel with exhaust test group testing and therefore applied the same scaling factor to OBD testing costs as determined for exhaust emissions testing.

TABLE VII.A–6—COST OF ONE CERTIFICATE WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CERTIFICATE GROUPS

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate
Total Cost for Exhaust Tests	$6,257.79	0.80	$5,015.22
Total Cost for Evap Tests	6,368.70	0.45	2,879.63
Total Cost for OBD Demo Tests	26,316.76	0.80	21,091.18
Total Costs for Travel, Vehicle Shipments, and Application Preparation	16,867.04	Weighted appropriately to each task.	11,385.68
Certification Fees	4,000.00	1	4,000.00
Total Cost for OEM Test Group(s) of Vehicles	59,810.30		44,371.70

Thus, the current base cost of compliance for one certificate, including all testing, associated labor, and overhead and general and administrative costs if costs are scaled is about $44,372.

3. Baseline Cost Analysis Based on Four OEM Certificates

EPA estimated the current baseline cost of conversion of four certificate groups of vehicles after applying appropriately scaled testing costs, including all testing, confirmatory testing, associated labor, overhead, and general and administrative costs to be about $177,487.

B. Certified Conversion Costs Under the Proposed Rule

Under this proposal the cost for a certified conversion will be similar to the current fuel conversion certification process, with three exceptions: (1) A statement of compliance using good engineering judgment would be accepted in lieu of HCHO testing analysis for certain alternative fuels, and the use of conversion factors to calculate NMOG from NMHC would be accepted in lieu of speciation testing for some alternative fuels; (2) statements of compliance are accepted for sealed gaseous fuel systems in lieu of evaporative emissions test data and (3)

[80] For an electronic version of the current fee filing form, *see http://www.epa.gov/otaq/cert/documents/on-hwy2010feeform-01-07-10.pdf.*

[81] 40 CFR 1027.120.

test group combinations would allow one set of test data to apply to a broader range of vehicles. These changes all reduce costs associated with compliance testing.

1. HCHO and NMOG Cost Reductions for CNG (or LNG), LPG, and Hydrogen

In lieu of testing, this proposal would accept a statement of compliance for formaldehyde emissions for conversions to CNG (or LNG), LPG, or hydrogen fuels. In addition, conversions to CNG (or LNG), LPG, or hydrogen need only submit engineering data and analysis supportive of the usage of a conversion factor from NMHC to NMOG, in lieu of speciation testing. Testing for formaldehyde is generally done in conjunction with NMOG speciation, and the average cost for both tests is $1,750 per test group, which would be scaled to an average of $1,400 per certificate. Under this proposal, testing cost for HCHO and NMOG analysis for conversions to CNG (or LNG), LPG, or hydrogen would be $0.

2. Evaporative Emissions Cost Reductions for Gaseous Fuels

The average cost for evaporative emissions hot soak, and diurnal SHED testing, including labor costs is $6,369. After scaling the average is $2,879 per certificate. The proposed amendment to 40 CFR 86.1811–04 would allow a manufacturer statement of compliance for evaporative testing for gaseous fuels. This would eliminate all evaporative emissions testing costs for gaseous fuels such as to CNG (or LNG), LPG, or hydrogen fuels.

3. Test Group Combination Cost Reductions for All Conversions to Clean Alternative Fuel

This proposal defines criteria which may allow the combination of several OEM test groups into a single aftermarket fuel conversion test group. This is a significant cost savings, the percentage of which is dependent upon the exact number of OEM test groups combined. For example: If two OEM test groups are combined, the testing costs for exhaust emission testing are halved; if three test groups are combined, these testing costs are about 33% the current cost.

The quantity of OEM test groups which can be combined into a single clean alternative fuel conversion test group will vary depending on the available OEM vehicle individual certification compliance strategies. EPA examined the 2007 light-duty OEM test group data and has conservatively estimated that on average conversion manufacturers will be permitted to combine about 25% of the OEM exhaust test groups. Therefore, the cost reduction estimate for our comparative grouping, four test groups, would conservatively result in a 25% cost reduction in exhaust emissions and OBD testing which can be applied to the scaling factors for comparison simplicity.

4. Total Cost Reductions for Certification Under the Proposed Rule

TABLE VII.B–1—PROPOSAL COST FOR NEW VEHICLE CONVERSION FOR ONE CERTIFICATE WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CERTIFICATE GROUPS

	Testing costs for one aftermarket fuel conversion certificate (no scaling for multiple certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate	Scaled testing costs for conversion of 4 OEM certificates
Total Cost for Exhaust Tests	$6,257.79	0.60	$3,761.41	$15,045.65
Total Cost for Evap Tests	6,368.70	0.45	2,879.63	11,518.51
Total Cost for OBD Demo Tests	26,316.76	0.60	15,790.06	63,160.23
Total Costs for Travel, Vehicle Shipments, and Application Preparation.	16,867.04	Weighted appropriately to each task.	10,313.03	41,252.14
Certification Fees	4,000.00	1	4,000.00	
Total Cost for OEM Test Groups(s) of Vehicles	59,810.30		36,744.13	146,976.52

The total cost for the certification of the conversion of four OEM certificates to any clean alternative fuel under the proposed rule is $146,977. This represents an estimate of a cost reduction of over $30,000 in current fuel conversion certification testing costs for conversion of four OEM certificates. If the conversion certification is for conversions to CNG (or LNG), LPG, or hydrogen fuels, the costs may be further reduced due to the technical amendments described above.

C. Intermediate Age Vehicle Compliance Costs

The current fuel conversion process requires certification. Therefore the baseline costs presented in Section VI.A also apply to intermediate age vehicles.

1. HCHO and NMOG Cost Reductions for CNG, LPG, and Hydrogen

In lieu of testing, this proposal would accept a statement of compliance for formaldehyde emissions for conversions to CNG (or LNG), LPG and hydrogen. In addition, conversions to CNG (or LNG), LPG, or hydrogen need only submit engineering data and analysis supportive of the usage of a conversion factor from NMHC to NMOG, in lieu of speciation testing. Testing for formaldehyde is generally done in conjunction with NMOG speciation, and the average cost for both tests is $1,750 per test group, which would be scaled to an average of $1,400 per certificate. Under this proposal, testing cost for HCHO and NMOG analysis for conversions to CNG (or LNG), and LPG would be $0.

2. Evaporative Emissions Cost Reductions for Gaseous Fuels

The average cost for evaporative emissions hot soak, and diurnal SHED testing, including labor costs is $6,369. After scaling the average is $2,879 per certificate. The proposed amendment to 40 CFR 86.1811–04 would allow a manufacturer statement of compliance for evaporative testing for gaseous fuels. This would eliminate all evaporative emissions testing costs for gaseous fuels.

3. Conversion Test Groups Cost Reduction

Under this proposal, conversion test groups are identical to the exhaust test groups for new, certified vehicles, except the exhaust conversion test groups do not require the same OEM OBD grouping. This provision is likely to result in a further reduction in testing costs due to further scaling. However, the scaling appropriate due to these combinations is variable from year to year and from OEM manufacturer to OEM manufacturer. Therefore, for the purposes of this cost estimate, we will assume that the exhaust conversion test group costs for intermediate age vehicles are the same as the exhaust test group costs for certification vehicles under this proposal.

4. OBD Demonstration Testing Cost Reduction

Manufacturers of conversion systems for intermediate age vehicles would not be required to submit OBD test data as part of their demonstration. The conversion manufacturer must still conduct any development and bear associated costs necessary to ensure that the post-conversion OBD system remains functional OBD and meets the EPA standards, but the costs associated with conducting tests for data submission to EPA would not be required. This is a significant cost reduction which would result in a cost savings of around $26,000 per exhaust conversion test group.

5. Total Cost Reductions for Intermediate Age Vehicles Under The Proposed Rule

TABLE VII.C–1—PROPOSAL COST FOR INTERMEDIATE AGE VEHICLE CONVERSION WHEN TESTING COSTS ARE SCALED FOR MULTIPLE CONVERSION TEST GROUPS

	Testing costs for one aftermarket fuel conversion compliance unit (no scaling for multiple OEM certificates applied)	Scaling factor	Scaled testing costs for conversion of one OEM certificate	Scaled testing costs for conversion of 4 OEM certificates
Total Cost for Exhaust Tests	$6,257.79	0.60	$3,761.41	$15,045.65
Total Cost for Evap Tests	6,368.70	0.45	2,879.63	11,518.51
Total Cost for OBD Demo Tests	0	0.60	0	0
Total Costs for Travel, Vehicle Shipments, and Data Submission	12,915.81	Weighted appropriately to each task.	6,361.80	25,447.20
Total Cost for Conversion of OEM Test Group(s) of Vehicles.	25,542.30		13,002.84	52,011.35

The total cost for the intermediate age compliance program for the conversion of vehicles represented by four OEM certificates to any clean alternative fuel under the proposed rule is $52,011. This represents an estimate of a cost reduction of more than $100,000 from the current estimated baseline cost of compliance for conversion of vehicles represented by four OEM certificates. If the conversion certification is for conversions to CNG, LPG or hydrogen, the costs may be further reduced due to the NMHC/NMOG technical amendment described under Section V.1.B.

D. Outside Useful Life Vehicle Compliance Costs

The testing that conversion manufacturers choose to undergo to demonstrate compliance for outside useful life vehicle applications will depend on which option is selected in the final rulemaking.

EPA would expect the maximum testing costs for Option #1 to be equivalent to those costs incurred for intermediate age vehicle compliance, since conducting all testing required for the intermediate age vehicle program would always be an acceptable demonstration of good engineering judgment.

Maximum testing costs for Option #2 would be double that of the intermediate age vehicle program, since two sets of exhaust test data would be required. However, the costs would still be less than the baseline costs because no OBD demonstration testing would be required.

Maximum testing costs for Option #3 would be the sum of the cost for Option #1 and about $300. An OBD scan tool with capabilities for printing via a computer and printer can be acquired for less than $300.

VIII. Associated Costs for Heavy-Duty Engines

The costs associated with achieving compliance under this proposal are expected to be the same or less, on an engine family basis, than the current cost of compliance for clean alternative fuel conversion of heavy-duty engines. The amount of cost reduction will vary based on conversion technology, fuel type, age of engine, conversion manufacturer preference, and the manufacturer's annual sales volume.

EPA has analyzed the cost of obtaining a certificate of conformity under current regulations and used that as a baseline cost. All costs analysis in this section are intended to apply to conversions to any fuel.

It is important to note that heavy-duty conversions have not received as much interest as LD conversions. As a result, EPA's experience with and data available on heavy-duty conversions is limited. For example, in model year (MY) 2008, EPA only received seven certification applications from four different converters. In 2009, the number dropped to three applications from three different manufacturers. Despite limited historical data on heavy-duty conversions, EPA has evaluated the cost a converter would incur to fully certify a heavy-duty engine that has been converted at each of three stages in the life of the engine: (1) Beginning of useful life, (2) mid-useful life, and (3) outside the useful life. These costs are then compared to a baseline—the current cost of certification.

The costs associated with obtaining an exemption from the tampering prohibition under this proposal are expected to be the same or less, on an engine family basis, than the current cost of obtaining an exemption from the tampering for prohibition for clean

alternative fuel conversion of heavy-duty engines. The amount of cost reduction will vary based on conversion technology, fuel type, age of engine, conversion manufacturer preference, and the manufacturer's annual sales volume.

EPA has analyzed the cost of obtaining a certificate of conformity under current regulations and used that as a baseline cost. The cost analysis in this section is intended to apply to conversions to any fuel.

It is important to note that heavy-duty engine conversions have not received as much interest as light-duty conversions. As a result, EPA has less experience with heavy-duty vehicle and engine conversions, and the available cost data are limited. For example, in model year 2008, EPA only received seven certification applications from four different converters. In 2009, the number dropped to three applications from three different manufacturers. Despite limited historical data on heavy-duty conversions, EPA has evaluated the cost a converter would incur to fully certify a heavy-duty engine that has been converted at each of three age categories: (1) New and nearly new engines, (2) intermediate age engines, and (3) outside useful life engines. These costs are then compared to a baseline—the current cost of certification.

A. Baseline Costs (Cost of Current Compliance)

Baseline costs were derived by determining the cost of obtaining exhaust and evaporative emission certificates for a new engine family under current regulations and procedures. A new engine family is a family that has not been certified in previous years. After the first certification, the manufacturer may in some cases use the same test data to obtain certificates of conformity in subsequent years. Engine families certified this way are referred to as "carry-overs." The cost of a carry-over family is mostly limited to the certification fee and minor labor costs.

Converters who have obtained certificates in recent years will notice that the baseline used here is higher than the costs they may have incurred. This is due, in part, to a temporary provision which exempts small volume manufacturers and vehicles above 14,000 pounds from submitting actual OBD test data to demonstrate compliance with OBD requirements. This exemption is in place through 2013. All heavy-duty converters who have certified with EPA have been able to claim this exemption. To represent the true future costs conversion manufacturers may incur, EPA has included costs for post-2013 OBD testing and evaporative emissions testing (for conversions to gaseous fuels) in the cost basis for heavy-duty conversions.

Estimated labor costs include the time engineering, managerial, legal and support staff spends performing the various activities associated with completing an application for certification and any necessary updates (running changes). These activities include data gathering and analysis, reviewing regulations, and recordkeeping. To estimate labor costs, EPA used the Bureau of Labor Statistics' (BLS) National Industry-specific Occupational Wage Estimates (May 2008) for the Motor Manufacturing Industry under the North American Industry Classification System (NAICS) Code 336100. Mean hourly rates were used and then increased by a factor of 2.1 to account for benefits and overhead. Table VIII.A–1 summarizes this information and presents the Standard Occupational Classification (SOC) code for each occupation used to estimate labor costs.

VIII.A–1—Labor Categories and Costs Used To Calculate Heavy-Duty Costs Basis

Occupation	SOC code No.	Mean hourly rate (BLS)	110%
Mechanical Engineers	17–2141	$37.59	$78.94
Engineering Managers	11–9041	54.56	114.58
Lawyers	23–1011	67.14	140.99
Secretaries, Except Legal, Medical and Executive	43–6014	19.76	41.50
Mechanical Engineering Technicians	17–3029	31.53	66.21
Engine and Other Machine Assemblers	51–2031	24.56	51.58
Truck Drivers, Heavy and Tractor-Trailer	53–3032	26.69	56.05

Manufacturers are also required to pay a certification fee under the authority of Section 217 of the CAA and the Independent Offices Appropriation Act (31 U.S.C. 9701). This fee is updated every calendar year to reflect changes on EPA labor costs and the number of certificates issued each year. The costs basis analysis includes the appropriate 2010 fee for exhaust ($35,967) and evaporative ($511) certification. However, it should be noted that the fees rule provides for a reduction in fee based on the "projected aggregate retail price of all vehicles or engines covered by that certificate" (69 FR 26226, Section F). Despite the possibility of a reduction in fee, EPA has used the full fee for the cost basis of heavy-duty engines.

1. Costs of Certification for One Heavy-Duty Exhaust New Engine Family Under Current Regulations

Historically, all manufacturers who have certified converted heavy-duty engines are small manufacturers and thus, do not own testing facilities. They hire independent laboratories to test their engines. EPA does not expect that to change in the foreseeable future. EPA estimates that the cost of testing a heavy-duty engine for exhaust emissions in an independent laboratory is approximately $30,000. Other operation and maintenance costs include shipping engines to test sites, lodging for manufacturer employees to oversee testing, recordkeeping costs, and the cost of preparing and submitting the application for certification.

Since EPA does not expect manufacturers to build testing laboratories or facilities in response to the proposed rule, no capital costs have been added to the cost basis.

a. Current Costs Associated With Obtaining One Heavy-Duty Exhaust Certificate of Conformity

TABLE VIII.A–2—CURRENT COSTS ASSOCIATED WITH OBTAINING ONE HEAVY-DUTY EXHAUST CERTIFICATE

Item	Estimated cost
Exhaust Testing	$30,000
Labor	9,495
Shipping Engines to Test Sites	2,500
Lodging	250
Other Operating and Maintenance Costs	15
Certification Fee for MY 2010	35,967
Total	78,227

b. Current Costs Associated With Obtaining One Heavy-Duty Evaporative Certificate of Conformity

Most heavy-duty conversions certified by EPA are conversions to Otto-cycle engines. Manufacturers and converters of Otto-cycle engines are required to demonstrate compliance with evaporative emissions requirements and obtain certificate of compliance with evaporative emissions. This certificate is in addition to the certificate of compliance with exhaust emission requirements. Manufacturers must combine engines into groups with similar evaporative emission characteristics or evaporative engine families. Exhaust and evaporative families are not necessarily identical. Engines grouped into several exhaust engine families may belong to only one evaporative family, and vice versa. For the purpose of establishing a costs baseline, EPA has included the cost of evaporative certification in its estimates.

TABLE VIII.A–3—CURRENT COSTS ASSOCIATED WITH OBTAINING ONE HEAVY-DUTY EVAPORATIVE CERTIFICATE

Item	Estimated cost
Exhaust Testing	$7,030
Labor	2,431
Other Operating and Maintenance Costs	524
Certification Fee for MY 2010	511
Total	10,496

c. Costs Associated With OBDII Demonstration Testing (Engine Family Basis)

Currently, alternative fuel converters are required to submit test data to demonstrate compliance with OBD regulations. However, 40 CFR 86.010–18(o) provides exemptions for small volume and alternative fueled engines used in applications over 14,000 lbs. All heavy-duty converters who have sought EPA certification in recent years have been able to claim one of these exemptions.

In an effort to also reduce costs for those heavy-duty manufacturers who are not able to claim this exemption, EPA is accepting through MY 2013 approval issued by either the California Air Resource Board or the EPA light-duty certification team as proof of compliance. Manufacturers must demonstrate how the OBD system they have designed to comply with California OBD requirements also complies with the intent of Federal requirements. So far, heavy-duty manufacturers have been able to either claim the exemption or submit approval from CARB or through the EPA light-duty process. Therefore, EPA does not have historical data to use as basis for OBD demonstrations specifically related to heavy-duty conversions.

In interest of accounting for every possible cost a heavy-duty converter might incur to get a certificate, EPA considers it appropriate to adopt light-duty estimates to represent the heavy-duty basis. Light duty estimates are summarized in Section VII.A(1)(a)(c), Table VII.A–4. EPA estimates the cost of OBD compliance at $26,317.

In summary, the base cost of fully certifying a heavy-duty engine family, including evaporative certification is $115,041, as indicated in Table VIII.A–4.

TABLE VIII.A–4—COST OF FULL CERTIFICATION AT THE BEGINNING OF USEFUL LIFE

Item	Estimated cost
Exhaust Certification	$42,260
Exhaust Certification Fee	35,967
Evaporative Certification	9,985
Evaporative Certification Fee	511
OBD Compliance Demonstration	26,317
Total	115,041

3. Baseline Cost Analysis Based on Four Exhaust Engine Families and Four Evaporative Families

Based on the cost of fully certifying one engine family for both exhaust and evaporative emissions, EPA has estimated the current baseline cost of certifying four heavy-duty conversion families, including all testing, associated labor, overhead, and general and administrative costs. For the purpose of this estimate, EPA assumed that these four exhaust families will belong to two evaporative families. This assumption reflects the fact that manufacturers tend to use the same evaporative system for multiple exhaust families. The estimated cost of four exhaust families and two evaporative families would be about $439,170 (Table VIII.A–5). Please see the next section for an explanation of why EPA has chosen to estimate the cost on four families.

TABLE VIII.A–5—COST OF CERTIFYING FOUR EXHAUST ENGINE FAMILIES AND TWO EVAPORATIVE FAMILIES UNDER CURRENT REGULATIONS

Item	Estimated cost	Number of engine families	Total cost
Exhaust Certification	$42,260	4	$169,042
Exhaust Certification Fee	35,967	4	143,868
Evaporative Certification	9,985	2	19,971
Evaporative Certification Fee	511	2	1,022
OBD Compliance Demonstration	26,317	4	105,268
Total	111,424	4	439,170

B. Certified Conversion Costs Under the Proposed Rule

As mentioned above, interest in heavy-duty conversions has been low in the past. In model year 2008, EPA received only seven applications for certification from a total of four converters. In 2009, only three of those converters submitted one application each. EPA understands that this is in part due to converters not submitting an application until they find a market for the engines. Light-duty vehicles are typically sold in higher volumes than heavy duty engines. Since the cost of certification is spread over a smaller pool of engines, it is typically more expensive to certify a heavy-duty family on a per engine basis.

After reviewing available information, EPA determined that the current data are not sufficient to develop a scaling factor that could be applied in order to calculate an estimated cost of certification under the proposed rule. Instead, EPA believes it is more appropriate to illustrate how the proposed regulations would affect a converter seeking certification. This hypothetical scenario is partly based on the actual case of a converter who certified four families in 2008. The scenario is also used for mid-useful-life and end-of-useful-life estimates.

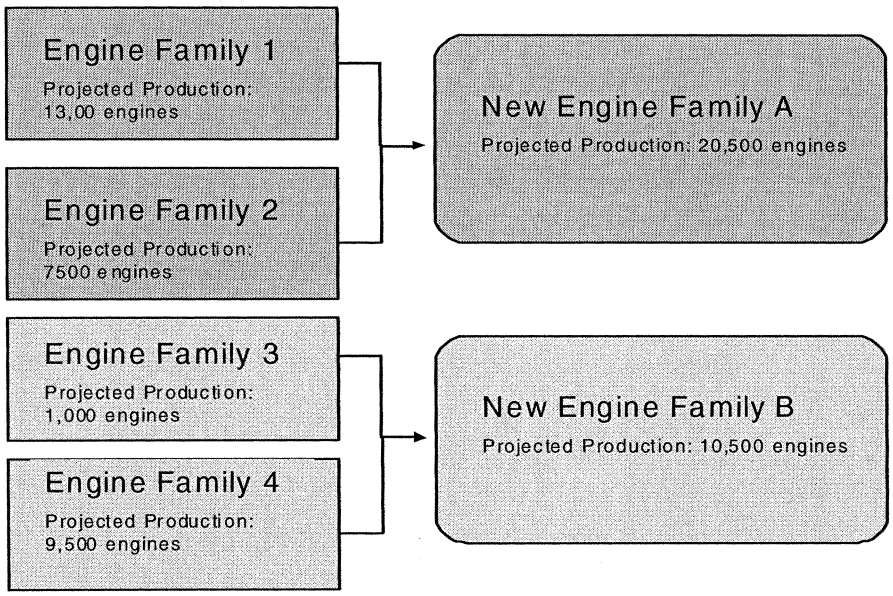
1. Base Scenario

In MY 2008, Converter X obtained certificates of conformity with heavy-duty exhaust emission regulations for four engine families. Converter X used current regulations found at 40 CFR 86.000–24 to determine how many exhaust engine families, and therefore, how many certificates it needed. For the purpose of this demonstration, EPA will assume that Converter X submitted one test data set and paid one full fee for each exhaust certificate. If Converter X also pursues evaporative certification for two families separately, it would have to pay for two evaporative tests and two evaporative fees. In addition OBD approval was obtained. As shown in Table VIII.A–5 in the previous section, the cost for this scenario is $439,170.

2. Scenario Under Proposed Regulations

After reviewing the characteristics of each engine family as reported in the applications for certification, EPA applied the criteria for combining multiple engine families contained in the proposed rule. For a list of this criteria, see Section IV.B. Had the proposed regulations been available to Converter X, Converter X would have been able to combine two of its engine families into engine family A, and the remaining two engine families into engine family B. Figure VIII.B–1 illustrates this combination.

Figure VIII.B-1 Possible Engine Family Combinations for Converter X



By submitting only two exhaust certificate applications, Converter X would only need to perform two tests and pay two fees instead of four tests and fees, thus cutting the cost of certifying its exhaust engine families in half. (Table VIII.B–1).

TABLE VIII.B–1—COST OF CERTIFYING TWO EXHAUST ENGINE FAMILIES AND TWO EVAPORATIVE FAMILIES UNDER PROPOSED RULE

Item	Estimated cost	Number of engine families	Total cost
Exhaust Certification	$42,260	2	$ 84,521
Exhaust Certification Fee	35,967	2	71,934
Evaporative Certification	9,985	2	19,971
Evaporative Certification Fee	511	2	1,022
OBD Compliance Demonstration	26,317	2	52,634
Total	111,424	2	230,082

The total cost of certifying the same engines under the proposed rule is $230,082, representing 48% savings for Converter X over the base costs under the current regulations. The cost of certification is spread over a larger pool of engines, lowering the cost per unit, as Figure VIII.B–1 shows. The new engine family combination criteria may create this type of cost-cutting scenario.

C. Intermediate Age Engine Compliance Costs

The current fuel conversion process requires certification regardless of the age of the engine being converted. Therefore the baseline costs presented in Section VIII.A also apply to intermediate age heavy-duty engines. Under the proposed rule, converters of intermediate age engines will be required to gather and submit all required data, including test data. Engine families will be grouped in larger families as described in Section VIII.B. However, the proposed rule does not require EPA to issue a certificate of conformity for intermediate age engines. Instead, manufacturers will be required to submit data to show that converted engines meet applicable standards. In addition, OBD testing will not be required for intermediate conversions.

If the engine families Converter X certified in our previous scenario were intermediate age engines, Converter X would have savings due to both (1) engine family groupings, and (2) the lack of a certification fee. As shown in Table VIII.B–2, the cost to Converter X would be about $97,259. This represents savings of about $341,912 or 78% when compared to the baseline.

TABLE VIII.B–2—COST OF INTERMEDIATE AGE CONVERSIONS CERTIFICATION UNDER PROPOSED RULE

Item	Baseline cost for four exhaust and two evap families (current regulations)	Cost for two exhaust and two evap families (new and nearly new enignes—proposed rule)	Cost for two exhaust and two evap families (intermediate age—proposed rule)
Exhaust Certification	$169,042	$84,521	$84,521
Exhaust Certification Fee	143,868	71,934	.....
Evaporative Certification	19,971	19,971	12,738
Evaporative Certification Fee	1,022	1,022	.....
OBD Compliance Demonstration	105,268	52,634	.....
Total	439,170	230,082	97,259

D. Outside Useful Life Engine Compliance Costs

The demonstration and associated compliance costs required of outside useful life conversion manufacturers will depend on which option is selected in the final rulemaking.

EPA would expect the maximum testing costs for Option #1 to be equivalent to those costs incurred for intermediate age engine compliance, since conducting all testing required for the intermediate age engine program would always be an acceptable demonstration of good engineering judgment.

Maximum testing costs for Option #2 would be double that of the intermediate age engine program, since two sets of emissions test data would be required. However, the costs would still be less than the baseline costs because no OBD demonstration testing would be required.

Maximum testing costs for Option #3 would be sum of the cost for Option #1 and about $300. An OBD scan tool with capabilities for printing via a computer and printer can be acquired for less than $300.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. OMB confirmed this proposal was non-significant on October 9, 2009 and waived review.

EPA prepared an analysis of the potential costs and benefits associated with this action. Cost analyses are summarized in Sections VII and VIII of this preamble.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) documents prepared by EPA have been assigned EPA ICR numbers 0783.55 and 1684.15.

The Agency proposes to collect information to ensure compliance with the provisions in this rule. This includes a variety of requirements for alternative fuel vehicle converters. Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) EPA is required to establish motor vehicle emission standards that apply throughout useful life, and to verify through issuance of a certificate of conformity that any vehicle or engine entered into commerce complies with the established emission standards. Under Section 203 of the Air Act, once certified, the vehicle or engine generally may not be altered from its certified configuration. EPA has established policies through which conversion manufacturers can demonstrate that the conversion does not compromise emissions compliance. The current regulations are located in 40 CFR part 85, subpart F and the proposal would amend these regulations. Section 208(a) of the Act requires that vehicle manufacturers and others subject to the Act provide information the Administrator may reasonably require to determine compliance with the regulations; submission of the information is therefore mandatory for securing the regulatory exemption from the tampering prohibition set forth in 40 CFR part 85, subpart F. We will consider confidential all information meeting the requirements of section 208(c) of the Clean Air Act.

As described in Sections VII and VIII of this preamble, compliance costs per test group or engine family are expected to decrease overall.

As shown in Table IX–1, the total annual industry burden associated with this proposal is about 7,247 hours and $1,186,726 in annual capital and operations and maintenance costs based on a projection of 13 respondents. The estimated burden for converters is a total estimate for both new and existing reporting requirements. This represents an estimated reduction in burden from previous requirements of 7,361 hours and $132,981 in non-labor costs for light-duty converters. The total heavy-duty conversion industry is expected to grow as a result of this rule, therefore increasing industry-wide costs. However, costs per respondent are likely to decrease, by as much as 48 percent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

TABLE IX–1—ESTIMATED BURDEN FOR REPORTING AND RECORDKEEPING REQUIREMENTS

Industry sector	Number of respondents	Annual burden (hours)	Estimated annual capital and O&M costs	Estimated annual labor cost	Estimated total costs
Light Duty Vehicles (IRC 0783.55)	5	6,068	$103,160	$352,495	$455,655
Heavy Duty Vehicles (ICR 1684.15)	8	1,179	1,083,566	182,876	1,266,442
Total	13	7,247	1,186,726	535,371	1,722,097

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes these ICRs, under Docket ID number [EPA–HQ–OAR–2009–0299]. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 26, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by June 25, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposal on small entities, small entity is defined as: (1) Small businesses that are primarily engaged in engine and motor vehicle parts manufacturing, specifically aftermarket fuel conversion systems for vehicles and engines as included in the definitions by NAICS, codes 336312 and 336399 with fewer than 750 employees (based on Small Business Administration size standards at 13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

To qualify for an exemption from the prohibition on tampering, existing alternative fuel conversion regulations require converters to complete vehicle and engine certification testing, data submittal and compliance procedures much like OEM new vehicle certification procedures. The current certification process for conversion of vehicles and engines that are two years old or newer largely will be retained, with a few amendments which may reduce the testing burden. The amendments include provisions such as (1) a statement of compliance using good engineering judgment in lieu of HCHO testing analysis for certain alternative fuels, (2) the use of conversion factors to calculate NMOG from NMHC in lieu of speciation testing for some alternative fuels, and (3) allowing the combination of OEM test groups into larger testing combinations for aftermarket fuel conversion.

In addition, this proposed rule creates an intermediate age and outside useful life compliance program as an alternative to vehicle and engine certification of fuel conversion of older vehicles and engines. The notification program will allow conversion manufacturers to conduct fewer tests and will provide a streamlined data-submittal process. The notification program may also allow for one set of test data to apply to a broader set of OEM vehicles.

We have therefore concluded that today's proposed rule will generally relieve or not increase regulatory burden for each affected small entity. The number of potentially affected small entities subject to this rule is projected to be less than 15 per year. The degree of cost reduction for each entity will vary based on conversion technology, fuel type, vehicle or engine age, applicability, conversion manufacturer preference, and the manufacturer's annual sales volume. See Sections VII and VIII of this preamble for further details. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments. The rule imposes no enforceable duty on any state, local or tribal governments. EPA has determined that this proposal does not contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. EPA has determined that this rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. EPA and the States will maintain the current distribution of power and responsibility. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this action. EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The proposed rule changes some required procedures but does not relax the control measures on sources regulated by the rule and therefore will not cause emissions increases from these sources.

X. Statutory Provisions and Legal Authority

Statutory authority for the regulation of clean alternative fuel conversion can be found in 42 U.S.C. 7401–7617q. The Administrator has determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d).[82]

List of Subjects in 40 CFR Parts 85 and 86

Environmental protection, Administrative practice and procedure, Alternative fuel conversion, Confidential business information, Incorporation by reference, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: May 5, 2010.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble title 40, Chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

1. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Subpart F of part 85 is revised to read as follows:

Subpart F—Exemption of Clean Alternative Fuel Conversions From Tampering Prohibition

Sec.

Subpart F—Exemption of Clean Alternative Fuel Conversions From Tampering Prohibition

§ 85.501 General applicability.

(a) This subpart describes the provisions related to an exemption from the tampering prohibition in Clean Air Act section 203(a) (42 U.S.C. 7522(a)) for light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines. This subpart F does not apply for highway motorcycles or for nonroad or stationary engines or equipment.

(b) For purposes of this subpart, the term "you" generally means a clean alternative fuel conversion manufacturer, which may also be called "conversion manufacturer" or "converter".

[82] *See* CAA section 307(d)(1)(V).

§ 85.502 Definitions.

The definitions in this section apply to this subpart. All terms that are not defined in this subpart have the meaning given in 40 CFR part 86. All terms that are not defined in this subpart or in 40 CFR part 86 have the meaning given in the Clean Air Act. The definitions follow:

Clean alternative fuel conversion (or "fuel conversion" or "conversion system") means any alteration of a motor vehicle or engine, its fueling system, or the integration of these systems, that allows the vehicle or engine to operate on a fuel or power source different from the fuel or power source for which the vehicle or engine was originally certified; and that is designed, constructed, and applied consistent with good engineering judgment and in accordance with all applicable regulations. A clean alternative fuel conversion also means the components, design and instructions to perform this alteration.

Clean alternative fuel conversion manufacturer (or "conversion manufacturer" or "converter") means any person that manufactures, assembles, sells, imports, or installs a motor vehicle or engine fuel conversion for the purpose of use of a clean alternative fuel.

Conversion model year means the clean alternative fuel conversion manufacturer's annual production period which includes January 1 of such calendar year. A specific model year may not include January 1 from the previous year or the following year. The term conversion model year means the calendar year if the converter has no different annual production period.

Date of conversion means the date on which the clean alternative fuel conversion system is fully installed and operable.

Dedicated vehicle/engine means any vehicle/engine engineered and designed to be operated using a single fuel.

Dual-fuel vehicle/engine means any vehicle/engine engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

Flex-fuel vehicle/engine means any vehicle/engine engineered and designed to be operated on a mixture of two fuels.

Heavy-duty engines describes all engines covered under the applicability of 40 CFR part 86, subpart A and part 1065.

Light-duty and heavy-duty complete vehicles describes all vehicles covered under the applicability of 40 CFR part 86, subpart S.

Original equipment manufacturer (OEM) means the original manufacturer of the new vehicle/engine or relating to the vehicle/engine in its original certified configuration.

Original model year means the model year in which a vehicle/engine was originally certified by the original equipment manufacturer, as noted on the emission control information label.

We (us, our) means the Administrator of the Environmental Protection Agency or any authorized representative.

§ 85.505 Overview.

(a) You are exempted from the tampering prohibition in Clean Air Act section 203(a)(3) (42 U.S.C. 7522)(a)(3) ("tampering") if you satisfy all the provisions of this subpart.

(b) The tampering exemption provisions described in this subpart are differentiated based on the age of the vehicle/engine at the point of conversion as follows:

(1) "New and relatively new" refers to a vehicle/engine where the date of conversion is in a calendar year that is not more than one year after the original model year. See § 85.510 for provisions that apply specifically to new and relatively new vehicles and engines.

(2) "Intermediate age" refers to a vehicle/engine that has not exceeded the useful life (in years, miles, or hours of operation) applicable to the vehicle or engine as originally certified, excluding new and relatively new vehicles/engines. See § 85.515 for provisions that apply specifically to intermediate-age vehicles and engines.

(3) "Outside useful life" refers to any vehicle/engine that has exceeded the useful life (in years, miles, or hours of operation) applicable to the vehicle/engine as originally certified. See § 85.520 for provisions that apply specifically to outside useful life vehicles/engines.

(c) If the converted vehicle/engine is a dual-fuel vehicle/engine, you must submit test data using each type of fuel, except that you may omit testing for the fuel originally used to certify the vehicle/engine if you comply with § 85.510(b)(7)(ii), (iii), and (v), § 85.515(b)(9)(iii)(B), (C), and (E), or § 85.520(b)(4)(ii), (iii) and (v) as applicable.

(d) This subpart specifies certain reporting requirements. We may ask you to give us more information than we specify in this subpart to determine whether your vehicles/engines conform with the requirements of this subpart. We may ask you to give us less information or do less testing than we specify in this subpart.

§ 85.510 Exemption provisions for new and relatively new vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to new and relatively new vehicles/engines if you certify the conversion systems to the emission standards specified in § 85.525 as described in this section; you meet the labeling and packaging requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the liability, recordkeeping, and end of year reporting requirements in § 85.535.

(b) Certification under this section must be based on the certification procedures specified in 40 CFR part 86, subpart A or S or 40 CFR part 1065, as applicable, subject to the following exceptions and special provisions:

(1) Test groups, engine families and evaporative/refueling families for light-duty and heavy-duty complete vehicles.

(i) Small volume manufacturers and small volume test groups.

(A) If criteria for small volume manufacturer or small volume test groups are met as defined in 40 CFR 86.1838–01, you may combine light-duty vehicles or heavy-duty vehicles which can be chassis certified under 40 CFR part 86, subpart S using good engineering judgment into conversion test groups if the following criteria are satisfied instead of those specified in 40 CFR 86.1827–01.

(1) Same OEM and OEM model year.

(2) Same OBD group.

(3) Same vehicle classification (*e.g.* light-duty vehicle, heavy-duty vehicle).

(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger.

(5) Same number of cylinders or combustion chambers.

(6) Same arrangement of cylinders or combustion chambers (*e.g.* in-line, v-shaped).

(7) Same combustion cycle (*e.g.,* two stroke, four stroke, Otto-cycle, diesel-cycle).

(8) Same engine type (*e.g.* piston, rotary, turbine, air cooled vs. water cooled).

(9) Same OEM fuel type (except otherwise similar gasoline and E85 flex-fuel vehicles may be combined into dedicated alternative fuel vehicles).

(10) Same fuel metering system (*e.g.* throttle body injection vs. port injection).

(11) Same catalyst construction (*e.g.* metal vs. ceramic substrate).

(12) All converted vehicles are subject to the most stringent emission standards used in certifying the OEM test groups within the conversion test group.

(B) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for vehicles with over 10,000 miles if the criteria for small volume

manufacturer or small volume test groups are met as defined in 40 CFR 86.1838–01. This deterioration factor will be adjusted according to vehicle or engine miles of operation. The deterioration factor is intended to predict the vehicle's emission levels at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or the rate differs by fuel type, if necessary.

(ii) Conversion evaporative/refueling families are identical to the OEM evaporative/refueling families unless the OEM evaporative emission system is no longer functionally necessary. You must create any new evaporative families according to 40 CFR 86.18321–01.

(2) Engine families and evaporative/refueling families for heavy-duty engines.

(i) Small volume heavy-duty engine families.

(A) If criteria for small volume is met as defined in 40 CFR 86.098–14 you may combine heavy-duty engines using good engineering judgment into conversion engine families if the following criteria are satisfied instead of those specified in 40 CFR part 86, subpart A.

(1) Same OEM.

(2) Same OBD group after MY 2013.

(3) Same service class (*e.g.* light heavy-duty diesel engines, medium heavy-duty diesel engines, heavy heavy-duty diesel engines).

(4) Engine displacement is within 15% of largest displacement or 50 CID, whichever is larger.

(5) Same number of cylinders.

(6) Same arrangement of cylinders.

(7) Same combustion cycle.

(8) Same method of air aspiration.

(9) Same fuel type (*e.g.* diesel/gasoline).

(10) Same fuel metering system (*e.g.* mechanical direct or electronic direct injection).

(11) Same catalyst/filter construction (*e.g.* metal vs. ceramic substrate).

(12) All converted vehicles are subject to the most stringent emission standards. For example, 2005 and 2007 heavy-duty diesel engines may be in the same family if they meet the most stringent (2007) standards.

(13) Same emission control technology (*e.g.,* internal or external EGR).

(B) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for engines with over 10,000 miles if the criteria for small volume manufacturer are met as defined in 40 CFR 86.1838–01 and 40 CFR 86.098–14. This deterioration factor will be adjusted according to vehicle or engine miles of operation. The deterioration factor is intended to predict the engine's emission levels at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or the rate differs by fuel type, if necessary.

(ii) Conversion evaporative/refueling families are identical to the OEM evaporative/refueling families unless the OEM evaporative emission system is no longer functionally necessary. You must create any new evaporative families according to 40 CFR 86.096–24(a).

(3) Conversion test groups/engine families may include vehicles/engines that are subject to different OEM emission standards; however, all the vehicles/engines certified under this subpart in a single conversion test group/engine family are subject to the most stringent standards that apply for vehicles or engines included in the conversion test group or engine family. For example, if OEM vehicle test groups originally certified to Tier 2, Bin 4 and Bin 5 standards are in the same conversion test group for purposes of fuel conversion, all the vehicles certified in the conversion test group under this subpart are subject to the Tier 2, Bin 4 standards.

(4) Conversion test groups/engine families for conversions to dual fueled vehicles/engines cannot include vehicles subject to different emission standards; however the data generated from exhaust emission testing on the new fuel for dual fueled test vehicles/engines may be carried over to vehicles/engines which otherwise meet the test group or engine family criteria and for which the test vehicle/engine data demonstrate compliance with the application vehicle or engine standard. Clean alternative fuel conversion evaporative families for dual fueled vehicles may not include vehicles/engines which were originally certified to different evaporative emissions standards.

(5) The vehicle/engine selected for testing must qualify as a worst-case vehicle/engine under 40 CFR 86.1828–01 or 40 CFR 86.096–24(b)(3), as applicable.

(6) A certificate issued under this section is valid starting with the indicated effective date but it is not valid for any clean alternative fuel conversion systems you manufacture after December 31 of the conversion model year for which it is issued. You may apply for a certificate of conformity for the next conversion model year using the applicable provisions for carryover certification.

(7) In lieu of specific certification test data, you may be eligible to submit the following attestations for the appropriate statements of compliance.

(i) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065.

(ii) The test group/engine family converted to dual fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle/engine was originally certified.

(iii) The test group/engine family converted to dual fuel operation retains all the functionality of the OEM OBD system (if so equipped) when operating on the fuel with which the vehicle/engine was originally certified.

(iv) The test group/engine family converted to an alternative fuel has fully functional OBD systems (if the OEM vehicles are OBD equipped) and therefore meets the OBD requirements in 40 CFR 86, subparts A and S when operating on the alternative fuel.

(v) The test group/engine family converted to dual fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicles/engines are operating on the alternative fuel.

(8) Certification fees apply per 40 CFR 1027.101.

(9) Conversion systems must be properly installed and adjusted such that the vehicle/engine operates consistent with the principles of good engineering judgment and in accordance with all applicable regulations.

§ 85.515 Exemption provisions for intermediate age vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to intermediate age vehicles/engines if you properly test, document and notify EPA that the conversion system complies with the emission standards specified in § 85.525 as described in paragraph (b) of this section; you meet the labeling requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the liability, recordkeeping, and end of year reporting requirements in § 85.535. You may also meet the requirements under this section by complying with the requirements in § 85.510.

(b) Documenting and notifying EPA under this section includes following all

the provisions described in § 85.510 for new and relatively new vehicles/engines with the following exceptions and special provisions:

(1) You may notify us as described in this section instead of certifying the aftermarket conversion system.

(2) Conversion test groups for light-duty and heavy-duty complete vehicles may be grouped together into an exhaust conversion test group using the criteria described in § 85.510(b)(1)(i)(A), except that the same OBD group is not a criterion.

(3) Conversion engine families for heavy-duty engines may be grouped together into an exhaust conversion engine family using the criteria described in § 85.510(b)(2)(i)(A), except that the same OBD group is not a criterion.

(4) EPA-established scaled assigned deterioration factors for both exhaust and evaporative emissions may be used for vehicles/engines with over 10,000 miles if the criteria for small volume manufacturer or small volume test groups are met as defined in 40 CFR 86.1838–01 or 40 CFR 86.096–14, as appropriate. This deterioration factor will be adjusted according to vehicle/engine miles or hours of operation. The deterioration factor is intended to predict the vehicle/engine's emission level at the end of the useful life. EPA may adjust these scaled assigned deterioration factors if we find the rate of deterioration non-constant or the rate differs by fuel type, if necessary.

(5) Conduct all exhaust and all evaporative and refueling emissions testing with a worst-case vehicle/engine to show that the conversion test group/engine family complies with exhaust and evaporative/refueling emission standards, as specified in 40 CFR part 86, subparts A, B, and S and 40 CFR part 1065.

(6) The OBD system must properly detect and identify malfunctions in all monitored emission-related powertrain systems or components including any new monitoring capability necessary to identify potential emission problems associated with the new fuel. These include but are not limited to: Fuel trim lean and rich monitors, catalyst deterioration monitors, engine misfire monitors, oxygen sensor deterioration monitors, EGR system monitors, if applicable, and vapor leak monitors, if applicable. No original OBD system monitor which is still applicable to the vehicle/engine may be aliased, removed, bypassed, or turned-off. No MILs shall be illuminated after the conversion. Readiness flags must be properly set for all monitors that identify any malfunction for all monitored components.

(7) Conversion test groups and conversion engine families for conversions to dual fueled vehicles/engines may not include vehicles/engines subject to different emissions standards. However the data generated from testing on the new fuel for dual fueled test vehicles/engines may be carried over to vehicles/engines which otherwise meet the conversion test group/engine family criteria and for which the test vehicle/engine data demonstrate compliance with the applicable vehicle/engine standard. Clean alternative fuel conversion evaporative families for dual fueled vehicles/engines cannot include vehicles/engines which were originally certified to different evaporative emissions standards.

(8) Durability procedures for large volume manufacturers of intermediate age light-duty vehicles, light-duty trucks and heavy-duty complete vehicles that follow provisions in 40 CFR 86.1820–01 may eliminate precious metal composition and catalyst grouping statistic when creating clean alternative fuel durability groupings.

(9) Notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted:

(i) Describe how your conversion system qualifies as a clean alternative fuel conversion. You must include emission test results from the required exhaust and evaporative emissions testing, applicable exhaust and evaporative emissions standards and deterioration factors. You must also include a description of how the test vehicle/engine selected qualifies as a worst-case vehicle/engine under 40 CFR 86.1828–01 or 40 CFR 86.096–24(b)(3) as applicable.

(ii) Describe the group of vehicles/engines (conversion test group/conversion engine family) that are covered by your notification based on the criteria specified in paragraph (b)(2) or (b)(3) of this section.

(iii) In lieu of specific test data, the clean alternative fuel conversion manufacturer may be eligible to submit attestations for the appropriate statements of compliance.

(A) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations in 40 CFR part 86, subparts A and S and 40 CFR part 1065.

(B) The test group/engine family converted to dual fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle was originally certified.

(C) The test group/engine family converted to dual fuel operation retains all the functionality of the OEM OBD system (if the OEM vehicles/engines are OBD equipped) when operating on the fuel with which the vehicle was originally certified.

(D) The test group/engine family converted to an alternative fuel has fully functional OBD systems (if the OEM vehicles/engines are OBD equipped) and therefore meets the OBD requirements in 40 CFR 86 subparts A and S when operating on the alternative fuel.

(E) The test group/engine family converted to dual fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicles/engines are operating on the alternative fuel.

(F) The test group/engine family converted to an alternative fuel use fueling systems, evaporative emission control systems, and engine powertrain components which are compatible with the alternative fuel and designed with the principles of good engineering judgment.

(iv) Include any other information as the Administrator may deem appropriate to establish the conversion system is for the purpose of conversion to a clean alternative fuel.

(10) Conversion systems must be properly installed and adjusted such that the vehicle/engine operates consistent with the principles of good engineering judgment and in accordance with all applicable regulations.

(c) Documentation under this section may use the same test data used to certify conversion systems under § 85.510, subject to the applicable provisions for differentiating test groups/engine families.

§ 85.520 Exemption provisions for outside useful life vehicles/engines.

(a) You are exempted from the tampering prohibition with respect to outside useful life vehicles/engines if you properly document and notify EPA that the conversion system satisfies all the provisions in this section; you meet the labeling requirements in § 85.530 before you sell, import or otherwise facilitate the use of a clean alternative fuel conversion system; and you meet the applicable requirements in § 85.535. You may also meet the requirements under this section by complying with the provisions in § 85.515.

(b) Documenting and notifying EPA under this section includes the following provisions:

(1) You may notify us as described in this section instead of certifying the conversion system.

(2) Conversion test groups, evaporative/refueling families, and conversion engine families may be the same as those allowed for the intermediate age vehicle and engine program in § 85.515(b)(2) and (3), and the new and relatively new vehicle and engine program in § 85.510(b)(1)(ii) and § 85.510(b)(2)(ii), as applicable.

(3) Use good engineering judgment to specify, use, and assemble fuel-system components and other hardware and software that are properly designed and matched for the vehicles or engines in which they will be installed. You must submit a detailed description of the conversion system. The submission must provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to sustain acceptable emission levels in a worst case vehicle/engine. Required technical information must include a complete characterization of exhaust and evaporative emissions control strategies, the fuel delivery system, durability, and specifications related to OBD system functionality. Good engineering judgment also dictates that any testing or data used to satisfy demonstration requirements be generated at a quality laboratory that is capable of performing official EPA emission tests and follows good laboratory practices.

(4) Notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted, where applicable:

(i) The test group/engine family converted to an alternative fuel has properly exercised the optional and applicable statements of compliance or waivers in the certification regulations in 40 CFR part 86, subparts A and S and 40 CFR part 1065.

(ii) The test group/engine family converted to dual fuel operation retains all the OEM fuel system, engine calibration, and emission control system functionality when operating on the fuel with which the vehicle was originally certified.

(iii) The test group/engine family converted to dual fuel operation retains all the functionality of the OEM OBD system (if the OEM vehicles/engines are OBD equipped) when operating on the fuel with which the vehicle was originally certified.

(iv) The test group/engine family converted to an alternative fuel has fully functional OBD systems (if the OEM vehicles/engines are OBD equipped) and therefore meets the OBD requirements in 40 CFR Part 86, subpart S when operating on the alternative fuel.

(v) The test group/engine family converted to dual fuel operation properly purges hydrocarbon vapor from the evaporative emission canister when the vehicle is operating on the alternative fuel.

(vi) The test group/engine family converted to an alternative fuel use fueling systems, evaporative emission control systems, and engine powertrain components which are compatible with the alternative fuel and designed with the principles of good engineering judgment.

(vii) Include any other information as the Administrator may deem appropriate to establish that the conversion system is for the purpose of conversion to a clean alternative fuel.

Option 1 for paragraph (b)(5):

(5) Notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted, where applicable:

(i) Describe how your conversion system complies with the good engineering judgment criteria in § 85.520(b)(3) and/or other requirements under this subpart or other applicable subparts such that the conversion system qualifies as a clean alternative fuel conversion. The submission must provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to sustain acceptable emission levels in a worst case vehicle/engine. Required technical information must include a complete characterization of exhaust and evaporative emissions control strategies, the fuel delivery system, durability, and specifications related to OBD system functionality. EPA may ask you to supply additional information, including test data, to support the claim that the conversion system does not increase emissions and involves good engineering judgment that is being applied for purposes of conversion to a clean alternative fuel.

(ii) Describe the group of vehicles or engines that are covered by your notification based on the criteria specified in paragraph (b)(2) of this section.

(iii) Include any other information as the Administrator may deem appropriate to establish the conversion system is for the purpose of conversion to a clean alternative fuel.

Option 2 for paragraph (b)(5):

(5) Notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted, where applicable:

(i) Describe how your conversion system complies with the good engineering judgment criteria in § 85.520(b)(3) and/or other requirements under this subpart or other applicable subparts such that the conversion system qualifies as a clean alternative fuel conversion.

(ii) Additionally, a clean alternative fuel conversion manufacturer must either

(A) Submit data demonstrating that the vehicle or engine would meet the applicable exhaust and evaporative emissions standards as if it were within its defined useful life, or

(B) Submit comparative emission test data to verify that emissions do not increase as a result of the fuel conversion. Submit data from two sets of the applicable exhaust and evaporative/refueling testing described in 40 CFR part 86 and part 1065, with the first test conducted before conversion and the second test after conversion. The data must demonstrate that emissions do not increase after conversion. The test vehicle(s)/engine(s) must be set to the manufacturer's tune up specification before the first test, and, apart from what is required of the normal conversion procedure, no additional adjustments to the vehicle/engine may occur between the first and second tests.

(iii) Describe the group of vehicles or engines that are covered by your notification based on the criteria specified in paragraph (b)(2) of this section.

(iv) Include any other information as the Administrator may deem appropriate to establish the conversion system is for the purpose of conversion to a clean alternative fuel.

Option 3 for paragraph (b)(5):

(5) Notify us by electronic submission in a format specified by the Administrator with all required documentation. The following must be submitted, where applicable:

(i) Describe how your conversion system complies with the good engineering judgment criteria in § 85.520(b)(3) and/or other requirements under this subpart or other applicable subparts such that the conversion system qualifies as a clean alternative fuel conversion. The submission must provide a level of technical detail sufficient for EPA to confirm the conversion system's ability to sustain acceptable emission levels in a worst case vehicle/engine. Required technical information must include a complete characterization of exhaust and

evaporative emissions control strategies, the fuel delivery system, durability, and specifications related to OBD system functionality. EPA may ask you to supply additional information, including test data, to support the claim that the conversion system does not increase emissions and involves good engineering judgment that is being applied for purposes of conversion to a clean alternative fuel.

(ii) Submit a printed version of results from an OBD scan tool following test procedures in 40 CFR 85.2222, with the exception that paragraph (c)(2) of this section does not apply. If necessary, the evaporative emission readiness monitor may remain unset for conversions to dedicated alternative gaseous fuels. The results may not demonstrate a failed test.

(iii) Describe the group of vehicles/engines that are covered by your notification based on the criteria specified in paragraph (b)(2) of this section.

(iv) Include any other information as the Administrator may deem appropriate, which may include test data, to establish the conversion system is for the purpose of conversion to a clean alternative fuel.

(6) Conversion systems must be properly installed and adjusted such that the vehicle or engine operates consistent with the principles of good engineering judgment and in accordance with all applicable regulations.

(c) You must keep records as described in § 85.535(e). EPA may ask for any documentation and/or conduct emission testing to demonstrate the conversion is for the purpose of a clean alternative fuel.

§ 85.525 Applicable standards.

Vehicles and engines that have been converted to operate on a different fuel must meet emission standards and related requirements as follows:

(a) The following emission standards and related requirements apply for conversions of vehicles and engines with an original model year of 1992 or earlier:

(1) *Exhaust hydrocarbons.* Light-duty vehicles must meet the Tier 0 hydrocarbon standard specified in 40 CFR 86.094–8. Light-duty trucks must meet the Tier 0 hydrocarbon standard specified in 40 CFR 86.094–9. Otto-cycle heavy-duty engines must meet the hydrocarbon standard specified in 40 CFR 86.096–10. Diesel heavy-duty engines must meet the hydrocarbon standard in 40 CFR 86.096–11.

(2) *CO, NO_X and particulate matter.* Vehicles and engines must meet the CO, NO_X, and particulate matter emission standards that applied for the vehicle or engine's original model year. If the engine was certified with a Family Emission Limit, as noted on the emission control information label, the modified engine may not exceed this Family Emission Limit.

(3) *Evaporative hydrocarbons.* Vehicles and engines must meet the evaporative hydrocarbon emission standards that applied for the vehicle or engine's original model year.

(b) For vehicles/engines with an original model year of 1993 or later, the modified vehicle or engine must meet the requirements that applied for the OEM vehicle/engine, or the most stringent OEM vehicle/engine standards in any allowable grouping. If the engine was certified with a Family Emission Limit for NO_X, NO_X+HC, or particulate matter, as noted on the vehicle emission control information label, the modified vehicle/engine may not exceed this Family Emission Limit.

§ 85.530 Vehicle and commercial packaging labeling.

(a) The following labeling requirements apply for clean alternative fuel conversion manufacturers:

(1) You must make a supplemental emission control information label for each clean alternative fuel conversion system.

(2) On the supplemental label identify the OEM vehicles/engines for which you authorize the use of your clean alternative fuel conversion system, consistent with the requirements of this subpart. You may do this by identifying the OEM vehicle test group/engine family names and OEM model year as described in § 85.510(c) or § 85.515(c) to which your conversion is applicable. Your commercial packaging materials must also clearly describe this information.

(3) Include the following on the supplemental label:

(i) State that the vehicle/engine has been equipped with a clean alternative fuel conversion system designed to allow it to operate on a fuel other than the fuel it was originally manufactured to operate on. Identify the fuel or fuels the vehicle/engine is designed to use and provide a unique conversion test group/conversion engine family name and conversion evaporative/refueling emissions family name.

(ii) Identify your corporate name, address, and telephone number.

(iii) Include one of the following statements that describes how you comply under this subpart and any applicable mileage or age restrictions due to compliance demonstration pathway:

(A) "This clean alternative fuel conversion system has been certified to meet EPA emission standards."

(B) "Testing has shown that this clean alternative fuel conversion system meets EPA emission standards under the intermediate age vehicle program."

(C) "This conversion system is for the purpose of use of a clean alternative fuel in accordance with EPA regulations and is applicable only to vehicles and engines that are older than 11 years or 120,000 miles." (Values must be adjusted to reflect OEM useful life and useful life in hours should be added, if appropriate.)

(iv) State the following: "This conversion was manufactured and installed consistent with the principles of good engineering judgment and all U.S. Environmental Protection Agency regulations."

(4) On the supplemental label, identify any original parts that will be removed for the conversion and any associated changes in maintenance specifications.

(5) On the supplemental label, include the date of conversion and the mileage of the vehicle or engine (or hours of operation for the engine) at the time of conversion.

(b) The supplemental emission control information label shall be placed in a permanent manner adjacent to the vehicle or engine's original emission control information label if possible. If it is impractical to place the supplemental label adjacent to the original label, it must be placed where it will be seen by a person viewing the original label on a part that is needed for normal operation and does not normally need replacement.

(c) All information provided on clean alternative fuel conversion system packaging must be consistent with the required vehicle labeling information.

§ 85.535 Liability, recordkeeping, and end of year reporting.

(a) Clean alternative fuel conversion manufacturers are liable for in-use performance of their conversion systems as outlined in this part.

(b) We may conduct or require testing on any vehicles or engines as allowed under the Clean Air Act. This may involve confirmatory testing or selective enforcement audits for clean alternative fuel conversion systems. Dual-fuel vehicles/engines may be tested when operating on either fuel type.

(c) Except for an application for certification, your actions to document compliance and notify us under this subpart are not a request for our approval. We generally do not give any formal approval short of issuing a

certificate of conformity. However, if we learn that your actions fall short of full compliance with applicable requirements we may notify you that you have not met applicable requirements or that we need more information to make that determination. The exemption from the tampering prohibition is void ab initio if the conversion manufacturer has not satisfied all of the applicable provisions of this subpart even if a submission to EPA has been made and the conversion system appears on EPA's publicly available list of compliant systems.

(d) Clean alternative fuel conversion manufacturers must accept in-use liability for warranty and recall for any parts or systems for which the failure can be traced to the conversion, regardless of whether application was proper or improper. The original equipment manufacturer shall remain liable for the performance of any parts or systems which retain their original function following conversion and are unaffected by the conversion. The applicable useful life of a clean alternative fuel converted vehicle/engine shall end at the same time of the useful life of the original vehicle.

(e) Clean alternative fuel conversion manufacturers must keep sufficient records for five years to show that they meet applicable requirements.

(f) Clean alternative fuel conversion manufacturers must submit an end of the year sales report to EPA describing the number of conversions. The number of conversions is the sum of the calendar year intermediate age and outside useful life conversions and the same model year certified clean alternative fuel conversions. The number of conversions will be added to any other vehicle and engine sales accounted for using 40 CFR 86.1838–01 or 40 CFR 86.096–14 as appropriate to determine small volume manufacturer status.

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

3. The authority citation for 40 CFR part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—[Amended]

4. Section 86.1810–01 is amended by revising paragraph (p) to read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * * *

(p) For Tier 2 and interim non-Tier 2 vehicles fueled by gasoline, diesel, natural gas, liquefied petroleum gas, or hydrogen manufacturers may measure non-methane hydrocarbons (NMHC) in lieu of NMOG. Manufacturers must multiply NMHC measurements from gasoline vehicles by an adjustment factor of 1.04 before comparing with the NMOG standard to determine compliance with that standard. Manufacturers may use other factors to adjust NMHC results to more properly represent NMOG results. Such factors must be based upon comparative testing of NMOG and NMHC emissions and be approved in advance by the Administrator.

5. Section 86.1829–01 is amended by revising paragraphs (b)(1)(iii)(E) and (F), and by revising the last sentence of paragraph (b)(2)(i) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(E) In lieu of testing a gasoline or diesel fueled, natural gas, liquefied petroleum gas, or hydrogen fueled Tier 2 or interim non-Tier 2 vehicle for formaldehyde emissions when such vehicles are certified based upon NMHC emissions, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

(F) In lieu of testing a petroleum-fueled, natural gas, liquefied petroleum gas, or hydrogen fueled heavy-duty vehicle for formaldehyde emissions for certification, a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement must be based on previous emission tests, development tests, or other appropriate information.

(2) * * *

(i) * * * In lieu of testing natural gas, liquefied petroleum gas, or hydrogen fueled vehicles to demonstrate compliance with the evaporative emission standards specified in § 86.1811–04(e), a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate testing and/or design parameters, all light-duty vehicles, light-duty trucks, and complete heavy-duty vehicles comply with applicable emission standards.

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H.R. 3714/P.L. 111–166
Daniel Pearl Freedom of the Press Act of 2009 (May 17, 2010; 124 Stat. 1186)
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